

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

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Investigation of Whitewater Develop... E

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

SECOND SESSION

VOLUME XII

ON

**THE INQUIRY INTO WHETHER IMPROPER CONDUCT
OCCURRED WITH RESPECT TO THE OPERATION,
INVESTMENTS, AND ACTIVITIES OF WHITEWATER
DEVELOPMENT CORPORATION, MADISON GUARANTY
SAVINGS & LOAN, CAPITAL MANAGEMENT
SERVICES, AND RELATED MATTERS**

JANUARY 11, 16, 18, 23, 25, 30, AND 31;
FEBRUARY 1, 6, 7, 8, AND 13, 1996

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



DEPOSITORY
FEB 27 1998

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

HEARINGS

BEFORE THE

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

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U.S. GOVERNMENT PRINTING OFFICE

41-382 CC

WASHINGTON : 1997

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DEVELOPMENT CORPORATION AND RELATED MATTERS

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TUESDAY, JANUARY 14, 1986

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INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

VOLUME XII

THURSDAY, JANUARY 11, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:15 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Mr. Massey, good morning.

Mr. MASSEY. Good morning.

The CHAIRMAN. Before we swear in our witness and take whatever statement he may wish to offer, I have a statement to make. Since we are starting our next phase of the hearings, I think it is important to take stock of the developments of recent weeks. These developments, quite candidly, are very troubling to the Chairman of this Committee.

The Committee has obtained important new evidence, and I will briefly outline this evidence, and the troubling circumstances of its discovery, for the Committee and the American people. Since the beginning of our hearings, the Committee has heard contradictory testimony and remarkable lapses of memory. One Administration official even implied that his diary lied.

We have unearthed evidence that has led to the resignations of a number of very senior Administration officials, including the Deputy Treasury Secretary, the White House Counsel, and the General Counsel of the Treasury Department.

This past summer when we looked at the handling of the documents in Deputy White House Counsel Vince Foster's office following his death, the testimony of senior White House officials was contradicted by professional law enforcement officials, including the Deputy Attorney General of the United States, the number two official at the Department of Justice.

The testimony of Maggie Williams, the First Lady's Chief of Staff, was contradicted by a Secret Service officer who testified that he saw Ms. Williams remove documents from Mr. Foster's office on the night of his death.

Susan Thomases, a close friend and adviser of Hillary Clinton, could not remember important events and conversations after Mr. Foster's death. This was all very troubling.

But in the last 3 weeks, we have seen new evidence emerge. There were three important developments.

First, the William Kennedy notes last December. This Committee asked for the notes from a November 5, 1993, Whitewater defense meeting. Mr. Kennedy, then an Associate Counsel to the President and former partner at the Rose Law Firm with Mrs. Clinton, attended this meeting and took notes. Also at this Whitewater defense meeting were White House officials Bruce Lindsey, Neil Eggleston, Bernie Nussbaum, and private attorneys. This was, to say the least, an unusual meeting. There were both Government and private lawyers at the meeting.

Now, in order to get the White House to turn the notes over, we had to get the Senate of the United States, to vote for enforcement. When we got these notes finally, after dragging on for many months, we discovered that Mr. Kennedy's notes contained some very disturbing passages.

In these notes there's a statement, "Vacuum Rose Law files." The White House has an absolutely absurd interpretation for that entry, but the real meaning is crystal-clear, because in the next line of Mr. Kennedy's notes, it says, "documents never know go out," and then under that "quietly." We all understand what that means. We know the documents were missing, the documents in question as it relates to the Rose Law Firm. And we're deeply concerned that the Rose Law Firm's records were vacuumed.

The second event of importance concerns new evidence about Travelgate and the miraculous discovery of a memo written by a former White House official, David Watkins, which shows a pattern of deception occurring at the White House, and that is disturbing.

This memo reveals that Hillary Clinton, contrary to her claims to Government investigators, did in fact order the firing of people working in the White House Travel Office. Travelgate again demonstrates the lengths that this Administration would go to hide its shortcomings and promote the interest of its cronies. The Travelgate affair shows what the Clinton Administration did to jeopardize a man's freedom, Billy Dale, who had been a director of the White House Travel Office which makes the travel arrangements for the press.

What the Watkins' memo and other memos now discovered show is what the Clinton Administration did in order to put their people in the Travel Office. They systematically destroyed the reputation and honor of those who worked at the White House Travel Office. They improperly brought in the FBI. This brought about censure upon the Clinton White House by institutions of responsibility, including the Attorney General that President Clinton appointed, Janet Reno.

What the Clinton Administration did was terrorize and traumatize civil servants in the White House, some who had been working there nearly 30 years, Billy Dale in particular.

Now we hear from the White House spokespeople an incredible thing. A man who is victimized is now characterized as ready to accept a plea agreement and that somehow this demonstrated that he may have been culpable or guilty. Terrible. After what he went through, after almost 2 years, after having to spend \$500,000 to clear his name—and understand, he was found innocent—to now characterize him because he had to make a choice of facing a possibility, with missing records, unable to defend himself, of considering a plea agreement in which he would not admit that he broke the law, I have to tell you, that is incredible.

And then last Friday we had a second miraculous production of records from the White House. The billing records from the Rose Law Firm were discovered unbelievably in the First Family's residence at the White House. For more than 2 years law enforcement officials have sought these records. The Department of Justice couldn't get them. The Independent Counsel couldn't get them. The Senate couldn't get them.

The American people do have a right to know why these records were not turned over sooner. How did they find their way to the First Family's residence? Who brought the Rose billing records to the residence of the White House? These records may have been taken from Vince Foster's office. We do know that Vince Foster's handwriting is all over them.

Again, we get a pattern of deception, deceit, and memory loss. These records show numerous and extensive communications between Hillary Clinton and Madison Guaranty S&L, in complete contradiction to claims made by Hillary Clinton and her representatives.

Let me tell you what Madison Guaranty turned out to be. It was a corrupt S&L owned by Jim McDougal, the Clintons' Whitewater partner. Federal regulators have said that it was operated as a criminal enterprise. Madison's collapse cost American taxpayers \$60 million. That's real money. Make no mistake about it, American taxpayers lost money because of Madison S&L and because of the way it was operated.

During the 1980's Mr. McDougal and his friends were concocting sham real estate deals to benefit the Arkansas political elite. One of those projects was called Castle Grande and another was called Whitewater. Castle Grande is a good example of the criminal activity of the Madison S&L. Federal regulators call this deal "a sham."

The chief beneficiaries of this sham were Seth Ward, Webster Hubbell's father-in-law, and Jim McDougal, the Clintons' Whitewater partner. Webb Hubbell is now in jail. He was the number three official in the Clinton Justice Department.

These Rose billing records are very troubling. These hearings will now begin to try to determine the truth about the three documents that we have just received—who knew about them, what did they know about them, and whether illegal activities occurred. The American people have a right to know the full facts about Whitewater and related matters. This Committee will continue to be

thorough, to be comprehensive, and to be fair. That is what the American people expect and deserve.

Senator Sarbanes, before I swear in the witness, do you have any comments or do any of the other Members have any comments?

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I want to pick up on the last point you made about having thorough, comprehensive, and fair hearings, and it is hard for me to see how we are going to have that if we reach conclusions before we have the facts. Now, I have watched the activity over the recent past in this full-scale assault with respect to Mrs. Clinton, when we have as yet not developed before the Committee all of the facts with respect to these various issues.

The billing matter for which we have Mr. Massey here today, we asked also that Mr. Clark, who is the managing partner at the Rose Law Firm and familiar with these billings, also be included on this panel so we could really get a full development of the situation, really find out exactly what these billings are all about. That was, I regret to say, refused by the Majority, and I regret that.

The billings that were provided in these billing sheets seem to be consistent with the questioning that Senator Bennett made with respect to material that was then available with respect to how much time Mrs. Clinton had put in on this matter.

In any event, it's something that needs to be developed carefully here at the table, without leaping to conclusions, which of course is what's been taking place.

Mr. Kennedy, as I understand it, has said that his reference to vacuum was a vacuum in the files, not a vacuum of the files. Now, we will get Mr. Kennedy here and we will be able to ask him that question and find that out. I don't think it helps the inquiry of the Committee, though, again to leap to a conclusion with respect to that and then assert it out to the public before we have a chance to develop the situation at the witness table. You know, terms like "obstruction" and "deceit" are being thrown about, and as yet I don't think we have thoroughly explored the factual questions that are raised by the matters before us.

We got the billing records. Everyone says well, if they were engaged in a conspiracy to deceive, I assume the billing records would never have been provided. The assertion is that they were just found and that as soon as they were found, they were brought to the Committee. Obviously we will put people at the witness table in order to explore that assertion, find out what the facts are, what actually happened, where were these records, and how did it come that they were discovered and then provided to the Committee. But to leap to a conclusion before we go through that process is not a contribution to a thorough, comprehensive, and fair hearing.

We have joined in most of the document requests and in most of the subpoenas, because I subscribe to the objective of a fair, comprehensive, and thorough hearing. I'm deeply disappointed that the request to put Mr. Clark before us as well today while we are exploring this billing question was not acceded to by the Majority.

In fact, I understand he is here today and I still think that he ought to be included at the table along with Mr. Massey—he has

been deposed by Counsel to the Committee, so it's not as though you are trying to bring someone in who hasn't been deposed, which I think is important. I don't think we ought to spring witnesses, as it were, who had not been previously deposed by Counsel so there's an opportunity to develop the factual basis upon which they are going to be questioned. I think proper procedure would require that. But that's occurred in Mr. Clark's case, and I think while we are trying to get a full picture of this, we ought to do all we can to get a full picture. That's our responsibility and we are committed to that responsibility, and I think that that's something the Committee ought to be engaged in, and I don't think it ought to be leaping to conclusions before we develop the facts at the table. And I think the facts developed at the table ought to be as thorough and full and as comprehensive as possible.

The CHAIRMAN. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Mr. Chairman, before we proceed with the witness, I have to say I have been out of town and haven't talked to Senator Sarbanes or to any member of our staff, but Senator Sarbanes' suggestion that Mr. Clark testify here and that we get a balanced presentation today seems to me to be a reasonable one, and if Mr. Clark is here, why don't we swear him in and move ahead and have Mr. Clark testify also.

The CHAIRMAN. There are good reasons, Senator. We're going to spend, we believe, a considerable period of time with this witness. Second, we are going to interview other witnesses whose work in relationship with the testimony that Mr. Clark will give is undoubtedly related, if not closely related, and we have not had an opportunity to examine those witnesses. Therefore, before we go forward, we need some additional information, which we are gathering, so that when we have Mr. Clark here, we'll also have that other information. So we are really not prepared, notwithstanding that we have had his deposition. There was other information and facts that our investigators are gathering.

Now, we will have him here. There's absolutely no inclination on the part of the Chairman to deny that. It's important. We are eager to hear from him. We will hear from him, but not at this point in time because we want to really concentrate on Mr. Massey's testimony. That's going to take quite some time, and that's why the Majority decided not to go forth with him today.

Senator SIMON. To the extent that we can agree on both sides and—

The CHAIRMAN. And we have in most cases.

Senator SIMON. —not present what may appear to be a stacked deck, I think that's in everyone's best interest, Mr. Chairman.

The CHAIRMAN. I agree.

Mr. Massey, do you have a statement you would like to make?

SWORN TESTIMONY OF RICHARD N. MASSEY ATTORNEY, ROSE LAW FIRM

Mr. MASSEY. No, sir, I don't.

The CHAIRMAN. Let me first say for the record we thank you for your cooperation.

Mr. MASSEY. Happy to be here.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Massey, we thank you for making it in under very difficult weather conditions. We appreciate that.

Mr. Massey, when did you graduate from law school?

Mr. MASSEY. In May 1984.

Mr. CHERTOFF. Would you pull the microphone up a little closer?

Mr. MASSEY. May 1984, from the University of Arkansas.

Mr. CHERTOFF. Did you go to work right after you graduated?

Mr. MASSEY. Yes, sir, after passing the bar.

Mr. CHERTOFF. When did you start work?

Mr. MASSEY. August 1984.

Mr. CHERTOFF. That's when you passed the bar?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. In August 1984, where did you start work?

Mr. MASSEY. I was an associate at the Rose Firm in Little Rock.

Mr. CHERTOFF. That's the Rose Law Firm.

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. What was your position at the Rose Law Firm starting in August 1984?

Mr. MASSEY. I was called an associate lawyer, which is a non-equity lawyer at the firm.

Mr. CHERTOFF. Just for the benefit of Members of the Committee who don't have the experience of the way law firms are organized, is it fair to say that your firm was organized along the distinction between partners who are essentially owners of the firm and associates who are lawyers who are employed at the firm?

Mr. MASSEY. Yes, sir. That's very fair.

Mr. CHERTOFF. And the general practice was at your firm, I take it, that associates after a few years if they performed well would be promoted to become partners?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. Is it also fair to say that it was the practice in your firm to have the work of associates at the firm supervised by one or more partners?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. Now, what areas of law did you practice in the Rose Law Firm when you began in August 1984?

Mr. MASSEY. Mr. Chertoff, the section or the division in which I practiced was called securities. It's more a finance practice, raising money, loans, some larger corporate loans, primarily equity-type transactions.

Mr. CHERTOFF. When you say raising money and loans, you, as a beginning lawyer, were doing the legal work for institutions that were raising stock by borrowing?

Mr. MASSEY. Yes, sir, that's correct, raising capital.

Mr. CHERTOFF. Are you familiar with a bank known as the Madison Guaranty Bank?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. Did there come a time in April 1985—

Mr. MASSEY. Excuse me, sir, Madison Guaranty Savings & Loan.

Mr. CHERTOFF. Right, Madison Guaranty Savings & Loan. Did there come a time in April of 1984, about 8 months after you came

to the Rose Law Firm, that you began to work on a matter for Madison Guaranty Savings & Loan?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. What was the matter you began to work on?

Mr. MASSEY. The first matter I worked on for Madison Savings & Loan was seeking from the Arkansas savings and loan regulators the authority to create a class of preferred stock.

Mr. CHERTOFF. When you say a class of preferred stock, what does that mean?

Mr. MASSEY. Preferred is a kind of equity. Typically it bears a dividend and oftentimes doesn't vote.

Mr. CHERTOFF. Would it be fair to say that in April 1985, what you were working on, or you began working on was legal work connected with an effort by the savings and loan to raise additional money by issuing a form of stock to the public?

Mr. MASSEY. Yes, sir. To the public. I think our efforts were primarily to raise money through private transactions versus a public offering.

Mr. CHERTOFF. Now, how did you come to work on that matter?

Mr. MASSEY. Can you help me with the—how did it come about?

Mr. CHERTOFF. Yes, how did you come about to be assigned to work on that matter?

Mr. MASSEY. Sir, I don't remember. I've been asked that question many times.

Mr. CHERTOFF. Did you know a man by the name of John Latham?

Mr. MASSEY. Yes, sir, I did.

Mr. CHERTOFF. Who was Mr. Latham?

Mr. MASSEY. I believe at the time he was the President or maybe Senior Vice President at Madison Savings & Loan.

Mr. CHERTOFF. How old was he at the time, in 1984 and 1985?

Mr. MASSEY. Sir, I don't know. Approximately my age, 25 to 30 years old.

Mr. CHERTOFF. So he was a young man at the time.

Mr. MASSEY. I would like to think that.

Mr. CHERTOFF. Before you began working on Madison Guaranty Savings & Loan, before the firm was retained, did you know Mr. Latham?

Mr. MASSEY. Yes, sir, I did.

Mr. CHERTOFF. How did you know him?

Mr. MASSEY. I knew him briefly in some classes I took in college. I also helped teach a securities class in Little Rock at a law school there, I helped teach it. John, I think, was auditing the class, maybe he was a student, and he asked—I got to know him in the context of that class.

Mr. CHERTOFF. Were you a social friend of his?

Mr. MASSEY. Not really, no, sir.

Mr. CHERTOFF. Would you consider yourself a friend of his, other than a casual acquaintance at the time?

Mr. MASSEY. No.

Mr. CHERTOFF. Did Mr. Latham come to you and offer you work for the Madison Guaranty Savings & Loan?

Mr. MASSEY. I don't believe so.

Mr. CHERTOFF. Did Mr. Latham come to you and ask you to help him—come to you directly, that is to say, before you had been assigned to the matter, and ask you to help him with an effort by the savings and loan to issue preferred stock?

Mr. MASSEY. Sir, I don't remember that. It could have happened, but I don't remember that.

Mr. CHERTOFF. But he did not come to you and ask you to work for him or to bring the firm in as the representative of the bank?

Mr. MASSEY. It could have happened, but I don't remember it.

Mr. CHERTOFF. Well, almost anything could have happened. What we have to try to do is determine what did happen.

Mr. MASSEY. I understand. I'm trying to help.

Mr. CHERTOFF. Did Mr. Latham come to you and offer you work at Madison Guaranty—for Madison Guaranty Savings & Loan in the spring of 1985?

Mr. MASSEY. Sir, it was 11 years ago. I'm not prepared to tell you that—definitively that that did not happen. I don't have any recollection of that happening. That's the best answer I can give you.

Mr. CHERTOFF. Did you sign him up as a client?

Mr. MASSEY. In terms of engagement letter or—no, sir.

Mr. CHERTOFF. Did you reach an agreement with Mr. Latham on your own to do work for the Madison Guaranty Bank?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. Did Mr. Latham ask you to go and help him—let me withdraw the question.

Did you go to Mrs. Clinton and ask Mrs. Clinton to help you with Madison Bank by getting permission from the firm to allow you to represent the bank?

Mr. MASSEY. I have been asked that question before. It's possible that I had a casual conversation with her that I don't remember from 11 years ago, sir, but I don't recall a conversation in which I went to her and asked her to help me bring in the client.

Mr. CHERTOFF. Did you tell Mrs. Clinton, again to the best of your recollection—

Mr. MASSEY. Yes, sir, I'm trying.

Mr. CHERTOFF. Did you tell Mrs. Clinton that Mr. Latham wanted to hire the firm but that you were concerned that certain lawyers at the Rose Firm were opposed to doing any more work for Jim McDougal and that you wanted her to help you arrange for the engagement?

Mr. MASSEY. I don't remember that happening.

Mr. CHERTOFF. Did you ask Mrs. Clinton to go to Mr. McDougal in order to arrange for him to pay money on a retainer basis, up front so to speak, so that the firm could do work for the Madison Bank?

Mr. MASSEY. I don't believe I was involved in any negotiations with respect to how the client would be billed or—it would not have been my place as a first-year associate to be involved in that.

Mr. CHERTOFF. So given your position as a first-year associate, you would not have gone to Mrs. Clinton and said look, here's a client who wants to come in, there's been a problem with billing in the past, would you speak to Mr. McDougal and see if you can get him to pay money in advance?

Mr. MASSEY. I don't remember that happening, sir.

Mr. CHERTOFF. Now, did you know Mr. McDougal as of the time you started working on Madison Guaranty Savings & Loan?

Mr. MASSEY. I have been asked that question too. I think to this day I have never met Mr. McDougal.

Mr. CHERTOFF. I am going to put up—I know you have a copy of this in front of you in the package, and if you could just take a moment to find it. It is a statement before the Resolution Trust Corporation in the matter of Madison Guaranty Savings & Loan Association, interrogatory responses of Hillary Rodham Clinton.

Mr. MASSEY. Bear with me, please. These are not—it's—

Mr. CHERTOFF. It's marked at the bottom DKS 767.

Mr. MASSEY. I found it now, thanks.

Mr. CHERTOFF. I'm going to direct your attention to DKS 800, which begins with interrogatory number 17. It is the next page in your package. It is DKS 800. And I'm going to ask you to begin reading with me along the second paragraph. Now, this is not your statement; correct?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. Have you ever seen this before?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. Were you consulted by anyone in terms of preparing an interrogatory response on behalf of the First Lady to the RTC?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. Begin reading: "To the best of my recollection, the president of Madison Guaranty, John Latham, who was a friend of an associate at the Rose Law Firm, Richard Massey, became interested in having Madison Guaranty issue some kind of preferred stock to raise capital. Latham had spoken to Massey about doing the related legal work." Do you remember Latham having spoken to you about doing the related work before the firm was retained by—

Mr. MASSEY. Yes, sir. I'm sorry, I interrupted you.

Mr. CHERTOFF. —before the firm was retained by Madison?

Mr. MASSEY. Sir, as I think I testified earlier, Mr. Latham was auditing our—a student in a class in which I was a participating lecturer, I guess you should say, and he asked a lot of questions relevant to raising capital, preferred structuring, preferred stock, how to market preferred stock. I think you see in the time records, a lot of the questions we ultimately did research on. So some of the questions in conversations we had in advance, I think, of April 23, 1985. We had had some conversations about these matters.

Mr. CHERTOFF. That's in the capacity when you were teaching the class?

Mr. MASSEY. Yes, sir, right.

Mr. CHERTOFF. So he was asking you questions as a student?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. Now, continuing: "In the spring of 1985, Massey came to see me," "Me" being Mrs. Clinton. "Because he had learned that certain lawyers at the law firm were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill." Is that your memory of this?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. [Continuing.] "And then only if Madison Guaranty agreed to prepay a certain sum to the firm once a month to cover fees and expenses." Is it your recollection that you discussed with Mrs. Clinton having Madison Guaranty prepay a certain sum to the firm?

Mr. MASSEY. Sir, I have heard that there were discussions, that there was some disgruntlement, and discussions like this could have gone on. I don't believe I was a party to them.

Mr. CHERTOFF. And the reason, as you said before, that you were not a party to it is that it's not the kind of a thing a first-year associate would be doing at a law firm; is that correct?

Mr. MASSEY. Not even at my law firm.

Mr. CHERTOFF. I want to continue down to the next paragraph: "I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him." Did you approach Mrs. Clinton about presenting this proposal to Jim McDougal?

Mr. MASSEY. As I said before, we could have had—if I may, I would like to give you a bit of a backdrop.

When John Latham was a student in this class, I had—in fairness I should say for the record that I had asked him to lunch—I'm sorry, I had asked him to lunch one day—sorry, Mr. Chairman—and pitched the business, asked for their work. They were a growing S&L. We liked working for companies like that, so I pitched the work. The response that I got was, gee, I'd like to think about hiring you but it's not up to me.

Mr. CHERTOFF. In other words, Mr. Latham told you it wasn't in his power to give work out from the bank.

Mr. MASSEY. That is correct. Now, it is possible—and I think I knew at that time that Mrs. Clinton had some relationship with Mr. McDougal, and so it's possible that I could have had a casual conversation with her in a hallway and said, gee, we would really like to try to get these folks' business, and maybe you could have a word with Mr. McDougal. It's very possible.

Mr. CHERTOFF. But the question here is different. The question here is, did you go to Mrs. Clinton with a proposal in hand to work for Madison Guaranty and ask her to go to see Mr. McDougal to arrange for a prepayment?

Mr. MASSEY. I don't remember that, Mr. Chertoff.

Mr. CHERTOFF. I want to continue: "I visited him at his office." "Him" being Mr. McDougal. "On April 23, 1985, and told him that I understood Latham wanted Massey to do some work for Madison Guaranty, but that our firm would not let Massey proceed until the previous bill was paid and some kind of prepayment arrangement was worked out for new work the firm might do." Now again, just to be clear on this, Mr. Latham did not come to you and say he wanted to give you some work; is that correct?

Mr. MASSEY. She may be relating in this interrogatory the luncheon that I had where he said, gee, I'd like to hire you, but it's not up to me, but that's—

Mr. CHERTOFF. Let's not speculate about someone else's mind. I just want to ascertain the facts here. The fact is you did not—am I correct that you did not go to Mrs. Clinton and say I have a pro-

posal to do work, can you go to Mr. McDougal and get him to agree to prepay?

Mr. MASSEY. Sir, I don't have a recollection of that.

Mr. CHERTOFF. Because, in fact, Mr. Latham didn't even have the power to award you the contract to do the work for Madison.

Mr. MASSEY. John told me it was up to his boss. It was up to Mr. McDougal.

Mr. CHERTOFF. I would like to turn to another document, and I will pause for a moment to find it for you. It is an Official Record of Interview, and it's page 1 of 5, "Official Record of Interview, Office of Investigations, Office of Inspector General." Why don't we pause for a moment and let you find it.

Mr. MASSEY. Sir, who is the interviewee?

Mr. CHERTOFF. Participants: Senior Special Agents, Hillary Rodham Clinton, and David E. Kendall.

Mr. MASSEY. You are a lot quicker with these than I am. I am trying, bear with me. I have it now, sir.

Mr. CHERTOFF. I would like to ask you to turn to the third page, and the beginning of the second full paragraph, which begins "Mrs. Clinton was asked several questions."

Mr. MASSEY. Sir, I will say the left margin has clipped a lot of it off.

Mr. CHERTOFF. Follow along with me in the middle of the paragraph. "Mrs. Clinton indicated she did not consider herself to be the attorney of record for Rose's representation of Madison before the ASD and presumed it to be Rick Massey." Were you the attorney of record on the representation of Madison before the Arkansas Securities Department?

Mr. MASSEY. Sir, I'm not sure. "Attorney of record" is a term I think that is used in litigation. I don't know what "attorney of record" means. I'm not trying to evade your question. I drafted the correspondence that you see in the files to the Arkansas Securities Department, and I did have conversations with him, and I think I probably had most, if not substantially all—I noticed that there were a few in the time records—with the ASD for the two matters during the time that I was involved.

Mr. CHERTOFF. Who supervised you?

Mr. MASSEY. Sir, I had—I worked with partners within my section and lawyers within my section with respect to technical matters. Mrs. Clinton was the billing attorney. She—as you'll see in the time records, she would fairly regularly contact me, ask me for updates on what was going on with the matters. She oftentimes would review draft documents that I had intended to submit at the time to the ASD.

Mr. CHERTOFF. To be clear, you said she would contact you for updates on the matter and she would review documents that you were preparing on the matter. We're talking about the application to make a preferred stock offering and the application for broker-dealer license.

Mr. MASSEY. Yes, sir. Those are the two matters in which I was doing most of the work.

Mr. CHERTOFF. Let me continue. The next sentence reads, "She recalled Massey came to her and asked her to be the billing attorney which was a normal practice when an associate was handling

a matter." Did you approach Mrs. Clinton and ask her to be the billing attorney on the Madison account?

Mr. MASSEY. Sir, I don't recall that.

Mr. CHERTOFF. I beg your pardon?

Mr. MASSEY. I'm sorry, I don't recall that.

Mr. CHERTOFF. You've already indicated that he did not bring in the Madison matter. My question to you was——

Mr. MASSEY. Sir, that's something that I—it's outside my knowledge as to whether I brought the Madison matter in or not. We've talked about this.

Mr. CHERTOFF. I understand. You can't go into Mr. McDougal's mind and know whether he knew you existed.

Mr. MASSEY. That's exactly right.

Mr. CHERTOFF. To be more careful, you did not come to Mrs. Clinton with an engagement in hand, contract in hand to do the Madison work?

Mr. MASSEY. I don't recall that happening, no, sir.

Mr. CHERTOFF. You did not come to Mrs. Clinton and say in substance, the firm has been hired, they have hired me to do work on this securities matter, would you be the billing attorney?

Mr. MASSEY. I don't have a recollection of that happening.

Mr. CHERTOFF. That didn't happen?

Mr. MASSEY. I don't recall that happening, sir.

Mr. CHERTOFF. And you would agree with me, I take it, that Mrs. Clinton did do work supervising you with respect to this Arkansas securities preferred stock offering issue.

Mr. MASSEY. If I could, I'd like to characterize my belief as to the relationship that I had with Mrs. Clinton during these two matters in which I was—again, I was primarily doing the work.

Mr. CHERTOFF. What were the two matters?

Mr. MASSEY. It was the preferred stock matter that you mentioned earlier, and a somewhat related matter of attempting to have the Arkansas Securities Department approve the operation of a brokerage, i.e., to sell their own securities. So they in effect wanted to market their own securities in this capitalization with the preferred stock, and they were related. I say two matters.

Now, during these matters, Mr. Chertoff, I can't tell you whether I initiated contact with her or whether she initiated contact with me, but as you probably know, in firms with the billing attorney, they need to be knowledgeable about the status of matters for the particular client so that if a client calls and wants to know, then she can pass that along. I think that is the nature of the contacts that I had.

Mr. CHERTOFF. Did you participate in a telephone call that Mrs. Clinton made on April 29, 1985, the day before you submitted the application on the behalf of Madison to Beverly Bassett Schaffer? Did you participate in a telephone call that she had with Mrs. Schaffer?

Mr. MASSEY. May I look at these?

Mr. CHERTOFF. Yes, it is DKS N 28934. It is a bill or an invoice covering the month of April, and it has—I will read you the last entry, "April 29, 1985, H. Clinton, telephone conference with B. Bassett, Securities Commissioner; telephone conference with R. Massey."

Mr. MASSEY. Bear with me, please. I have seen these. I received them on——

Mr. CHERTOFF. You probably received them very shortly after we got them.

Mr. MASSEY. Actually, I got them on Monday. Excuse me. May I look at these?

Mr. CHERTOFF. Yes. If we can pause for a moment and let the witness——

The CHAIRMAN. Yes.

Mr. CHERTOFF. Did you participate in this call?

Mr. MASSEY. It's hard to definitively say from this. I'm doing my best to remember things from 11 years ago.

Mr. CHERTOFF. I understand.

Mr. MASSEY. I don't record time for a conference with Ms. Bassett. I have no reason to dispute these records, so I apparently did not—could have happened and I may not have recorded the call, but I don't have a recollection of being on a call with Ms. Bassett.

Mr. CHERTOFF. Well, this is important. Recognizing that occasionally everybody slips, was it your regular routine practice to record your time for telephone conferences or work done on client matters?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. So your timesheets, within the limits of what's humanly possible, would accurately reflect the work that you did with respect to this matter?

Mr. MASSEY. As I said, I don't have any reason to doubt these records.

Mr. CHERTOFF. Did you come to learn, by the way, that Mrs. Clinton in 1986 did work on drafting an option agreement in relation to a piece of property that had been acquired by Seth Ward, between Seth Ward and the Madison Guaranty Savings & Loan?

Mr. MASSEY. Have I come to learn that?

Mr. CHERTOFF. Have you come to learn it?

Mr. MASSEY. Within the past few days, from reading the records and looking at the documents, that appears to be true, but I don't have any knowledge of that.

Mr. CHERTOFF. During 1985 and 1986, were you aware generally that Mrs. Clinton was doing some work involving transactions having to do with Madison Guaranty Savings & Loan?

Mr. MASSEY. Sir, I'll say, again I want to be as helpful as I can and I'll be happy to familiarize myself with matters in which I was not involved, but my involvement with Madison dropped off, as you can tell from the time records, about the end of 1985. I had some involvement thereafter. I was not aware frankly of any of these transactions.

Mr. CHERTOFF. Was there ever any discussion in the firm considering how usual or unusual it would be for Mrs. Clinton as a litigator to be doing work on transactional matters?

Mr. MASSEY. Litigators, as a general observation—and I practice with a lot of firms around the country. I'll just say my own anecdotal experience is that litigators in Little Rock, and maybe some other small towns, many have a bit broader practice than litigators in Washington or New York. So would it have been uncommon for Mrs. Clinton or any other litigator to have some involvement in

transaction work? Not in my opinion. Uncommon, it probably was not the focus of their practice as it was mine, but it wouldn't have been uncommon.

Mr. CHERTOFF. Now, you knew Mr. Thrash was working on some Madison matters as well; is that correct?

Mr. MASSEY. Sir, I don't have any recollection of any of these matters other than what I actually worked on. I worked on two things, I dropped off and I wasn't involved.

Mr. CHERTOFF. What department was Mr. Thrash in?

Mr. MASSEY. Tommy is in the commercial department and I think has been since he came to the firm.

Mr. CHERTOFF. I would like to bring you forward a little bit now to 1992, in particular during the period of time when the campaign was underway in February and March 1992. Did there come a time that you had a conversation with Vince Foster concerning your own records, your own file, regarding the work you had done on Madison Guaranty Savings & Loan?

Mr. MASSEY. Excuse me, February 1992?

Mr. CHERTOFF. Sometime in early 1992 or at any time in 1992, pardon me.

Mr. MASSEY. Yes.

Mr. CHERTOFF. Do you remember when that was?

Mr. MASSEY. February of 1992 is about as precise as I can get. Middle to late February.

Mr. CHERTOFF. How did that conversation come about?

Mr. MASSEY. Sir, I don't remember the precise words or circumstances, but it was generally he came to me and told me that he was putting together a firm response. There was, you are a learned lawyer and you have looked at a lot of the press and you can see that there was a lot of misinformation about a lot of these matters at that time. He said he was distressed by that, he wanted to put together a firm response and asked me for my files.

Mr. CHERTOFF. Did he ask you for original records?

Mr. MASSEY. I think he asked me for my files.

Mr. CHERTOFF. What did you give him?

Mr. MASSEY. I think I gave him copies.

Mr. CHERTOFF. Did you have a discussion with Mr. Foster about whether you had given him originals or copies?

Mr. MASSEY. I don't remember that.

Mr. CHERTOFF. Do you still have in your possession a copy of your file regarding the work that you did on this transaction?

Mr. MASSEY. I can say this, that before I appeared today, I reviewed every document—if I can, I will tell you what I did in 1992 and tell you what I have done since. In 1992, I carefully went through personally the Madison files. Those were my work files. I'm not saying that these were the firm's Madison files. These were my work files, and you have seen the matters that I worked on.

I copied those, many of them personally copied them, and when they had been copied, I compared them page by page to make sure that what I handed him I was retaining. I can say that the contents of my files in 1992, which frankly was the first occasion that I had had to look at those files since 1985, the contents of those files have all been delivered to this Committee.

Mr. CHERTOFF. Did you deliver them yourself? In other words, did the Rose Law Firm deliver them?

Mr. MASSEY. To the Committee or to Foster or——

Mr. CHERTOFF. Let me withdraw the question. Was there a point in time that you received copies of the files that were originally your files back from Mr. Kendall in Washington?

Mr. MASSEY. I think the firm received them. Now, did I receive them? No, sir.

Mr. CHERTOFF. So the firm received the copies of the documents that the firm received from Mr. Kendall relating to the work on Madison Guaranty. Those were originally in your files; correct?

Mr. MASSEY. To be honest with you, sir, I have not reviewed——maybe I should have but I have not reviewed the files returned to us from Mr. Kendall.

Mr. CHERTOFF. It was your work though; right?

Mr. MASSEY. They appear to be mine, yes, sir. They appear to relate to the things that I worked on.

Mr. CHERTOFF. Apart from the files you got back from Mr. Kendall, did you have your own separate set of work files relating to Madison that you kept in your possession continuously from 1992 to the present?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. Where were those kept?

Mr. MASSEY. I kept them in my office.

Mr. CHERTOFF. Do you know whether what the firm got back from Mr. Kendall was original files?

Mr. MASSEY. No, as I said, I haven't reviewed Mr. Kendall's files.

Mr. CHERTOFF. Now, with respect to printouts, billing printouts, did you have a set of billing printouts in your file?

Mr. MASSEY. I would not have had them. I did not have them. I was not a billing attorney and wouldn't ordinarily come into contact with bills when you're a first-year associate.

Mr. CHERTOFF. You've obviously seen documents now which have been furnished to you in the last few days beginning with number DKSJ 28928, which are copies of files relating to the billing. Do you know where the original printouts are that comprise the printouts on these documents?

Mr. MASSEY. No, sir, I do not.

Mr. CHERTOFF. Still keeping you in the spring of 1992, did you ever have a conversation with Mr. Hubbell, Webster Hubbell, in which you said to Mr. Hubbell that you would say you brought the client in, referring to Madison Guaranty Savings & Loan?

Mr. MASSEY. I would say that?

Mr. CHERTOFF. Yes.

Mr. MASSEY. No, sir, absolutely not.

Mr. CHERTOFF. Has anyone since the beginning of 1992 had any conversations with you whatsoever concerning what you would say about who brought in the work on Madison Guaranty, excluding your personal attorneys?

Mr. MASSEY. Absolutely not.

Mr. CHERTOFF. Have you ever said to somebody that you would say that you had brought in the work on Madison?

Mr. MASSEY. Sir, nobody has ever asked me to say I took the work. Nobody has asked me to say that.

Mr. CHERTOFF. You never told Mr. Hubbell you would say that?

Mr. MASSEY. No, sir, absolutely not.

Mr. CHERTOFF. Now, are you familiar with the direct investment ruling?

Mr. MASSEY. Not really.

Mr. CHERTOFF. Would it refresh your memory if I were to tell you the direct investment rule was a rule that limited the amount of money that a savings and loan could invest directly in real estate operations?

Mr. MASSEY. I understand the rule. I understand what the rule means only because my recollection has been refreshed from looking through timesheets, and from some of my correspondence.

Mr. CHERTOFF. Did you in the summer of 1985, while you were working for Madison Guaranty, do any research work on or have any discussion regarding the direct investment rule?

Mr. MASSEY. Excuse me, I will refer you to a document. I think there was a July 10 letter. It may or may not be in the package that I was handed, sir. In that letter, it was Mr. Handley of the Arkansas Securities Department who asked if Madison Guaranty's investment in the broker-dealer involved the direct investment rule. I realize I'm paraphrasing.

I looked at that rule. It was a Federal statute. I looked at that rule for purposes of giving him a reasoning that that rule was inapplicable with respect to the investment in the broker-dealer. That is the totality of my career in the direct investment rule.

Mr. CHERTOFF. Did you also have a conference or a discussion with the Federal Home Loan Bank Board regarding the direct investment rule?

Mr. MASSEY. I don't think so. I think that's a double entry, sir. I know the entry.

Mr. CHERTOFF. Just so we are all on the same document, it is DKSJN 28962, it says, "July 1 conference with S. Hawkins and FHLB regarding brokerage activities and direct investment rule." What does that relate to?

Mr. MASSEY. Sir, it was a 40-minute conversation a long time ago, and I wish I could tell you more. Sarah Hawkins was an officer at Madison. She was—in my memory, she was primarily the officer responsible for regulatory compliance. Most likely this—if you will look, Mr. Handley asked in his June letter to me, June 1985 letter to me, Mr. Handley asked about—to list their subsidiaries and the amount of investment they had, Madison Guaranty had, in each of these subsidiaries for purposes of their determination as to whether Madison was in compliance with that rule.

I would have had to get that information from Madison. My recollection is this coincided with the preparation of my July 10 letter in which—or July 17 letter in which we include information about their investment in subsidiaries.

Mr. CHERTOFF. That was part of your work on this application to the Arkansas Securities Department; is that correct?

Mr. MASSEY. My work was not calculating or opining as to whether that business was in compliance with that rule. It was outside of my area of expertise.

Mr. CHERTOFF. Now, you did not work in what has been described as the Industrial Development Corporation acquisition; is that correct?

Mr. MASSEY. No, sir. I saw one time entry, and I don't think I had any involvement in that other than that.

Mr. CHERTOFF. There was nothing in your files concerning that?

Mr. MASSEY. No, sir, absolutely not.

Mr. CHERTOFF. The time records indicate that Mrs. Clinton had a series of telephone calls with Seth Ward in December, November-December of 1985 and in early 1986. Do you know what those were about?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. With respect to the limited partnerships, that was an area you did work in; correct?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. There is a time reference there to a call or two to Susan McDougal. What was Susan McDougal—that was Mr. McDougal's wife?

Mr. MASSEY. Sir, I think if you look at the history, and I don't want to give you a hair-splitting answer, Susan McDougal, it's my knowledge that I think she was Jim McDougal's wife, OK. The history of this engagement was the first matter entered was, as you will see, the preferred stock matter.

The second matter was a matter called limited partnership. Primarily the work within that, at least during my involvement, was on the broker-dealer matter. I think these matters became billing matter catch-alls, if you will, until new matters could be opened. I have no recollection of Mrs. McDougal's involvement in either any limited partnership work or the broker-dealer matter. This could very well have been something totally unrelated to those things.

Mr. CHERTOFF. So you have no idea why Mrs. Clinton would have had a conversation with Mrs. McDougal that she would have been billing to Madison?

Mr. MASSEY. She was the wife of the principal stockholder and she may have been an officer, but I have no personal knowledge.

Mr. CHERTOFF. I see my time is up, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Mr. Massey. My name is Richard Ben-Veniste. We have not met prior to today, have we?

Mr. MASSEY. No, sir.

Mr. BEN-VENISTE. Indeed, you were not called to give a deposition to this Committee prior to your testimony; is that correct?

Mr. MASSEY. No, sir, I was not. Actually, I was called and I think we had scheduling problems and I did not give a deposition prior to this time.

Mr. BEN-VENISTE. Let me ask you about the question Mr. Chertoff began with, and that is the issue of client development some 10 or 11 years ago vis-à-vis the Madison Bank.

Now, if I understand your testimony, sir, it is correct that you had a relationship with Mr. Latham; correct?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. Who was Mr. Latham vis-à-vis the bank?

Mr. MASSEY. As I testified earlier, I am not exactly sure of his title. He was either the President or an Executive Vice President of the bank. He was a senior officer.

Mr. BEN-VENISTE. You knew that he was a senior officer of the Madison Bank.

Mr. MASSEY. That's correct.

Mr. BEN-VENISTE. Is it correct, sir, that in your capacity as an instructor at law school in a course in which Mr. Latham was in attendance, that from time to time Mr. Latham had come to you with questions relating to securities law and that you had provided answers?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. And knowing that Mr. Latham was both a student and an officer of a corporation, you characterized your advice to him in the student category and did not send Madison Bank any bill for the time spent conferring or the advice that you had given to Mr. Latham?

Mr. MASSEY. In the course of my career, I have given a lot of free advice.

Mr. BEN-VENISTE. We lawyers in private practice understand that sometimes casting that kind of bread upon the waters gets you some returns back in goodwill and business from the people to whom you give that advice; correct?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. And it was your hope, was it not, that Mr. Latham and the Madison Bank would consult you on an official basis in your private capacity as a lawyer with the Rose Law Firm?

Mr. MASSEY. Yes, sir. As I testified earlier, I actually pitched the business to him. I think the pitch was basically, gee, I'm—you are asking me all these questions. Why don't you hire us and put us to work on some of these things.

Mr. BEN-VENISTE. So very clearly you had it in mind that all of this advice would lead someday to signing up by the Rose Law Firm of this bank client?

Mr. MASSEY. I had hoped that, yes, sir.

Mr. BEN-VENISTE. Indeed, Mr. Latham told you in words or substance that he wouldn't object to that kind of relationship but it was not his decision to make?

Mr. MASSEY. That was the sense I got from the meeting, yes, sir.

Mr. BEN-VENISTE. And if I understand your testimony, you may have had a casual conversation with Mrs. Clinton about these circumstances, knowing that she was acquainted with Mr. McDougal?

Mr. MASSEY. Yes, sir, very possibly.

Mr. BEN-VENISTE. Mr. McDougal was the person to whom Mr. Latham referred as the decisionmaker on retaining a client?

Mr. MASSEY. That's correct.

Mr. BEN-VENISTE. So putting all of this together, there's no real mystery, is there, that there was an issue relating to securities work that you were being consulted on, on an informal basis, by Mr. Latham about that work, that you wanted to regularize that relationship to be an attorney-client relationship between the Rose Firm and the bank, that you may have mentioned it to Mrs. Clinton and that eventually the Rose Firm was retained by the bank to provide the service?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. Now going forward on that, you mentioned that things were being said about the Rose Firm in relationship to Madison Bank, back in the 1992 campaign, much of it inaccurate and unfair. I'm paraphrasing.

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. One of the things that was focused on, indeed it seemed to me to be the principal thing that was focused on, was the notion that somehow there was a cozy relationship between the Rose Firm and particularly Mrs. Clinton and the Securities Commissioner, Mrs. Bassett Schaffer; correct?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. And—

Mr. MASSEY. That was one of many inaccuracies, in my opinion.

Mr. BEN-VENISTE. That must have rankled you because you were the person who performed the legal work in connection with that matter?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. First, let's go ahead to the question of whether there was impropriety in the suggestion that it would be within the framework of the law in Arkansas, as you understood it, for the Madison Bank to be in a position to issue preferred securities.

Mr. MASSEY. Sir, there is no better form of capital than cash, and we were trying to raise cash for the institution. Regulators, I think, were recommending preferred stock issuance.

Mr. BEN-VENISTE. Please pull that microphone closer to you.

Mr. MASSEY. Regulators, both Federal and State, were recommending preferred stock issuances by S&L's at the time. It was due to a quirk in State law that created an issue as to whether preferred stock could actually be issued. Going through the time records, I will say it's my recollection that I believe that one of the officers told me that it was a Federal and FHLB employee, or maybe the supervisor, that had recommended that they issue the preferred, and it was certainly something that was being done all over the country.

Mr. BEN-VENISTE. So there was precedent for it all over the country, your understanding was through an informal conversation that the Federal regulators were recommending it quite clearly, it was being recommended that the Madison Bank increase its equity, and through this means, and you set out to research and determine whether in fact everything that you had heard and read was accurate and appropriate so that you could provide legal advice?

Mr. MASSEY. Yes, sir. Inherent in your question was whose idea was it, and I don't think it was our idea. I think it was either the regulators or the bank officers' idea, and it was a good idea.

Mr. BEN-VENISTE. Clearly this had been something that had been done in other parts of the country and had come to the attention of lawyers specializing in this matter. Much had been written about it in the trade publications and so forth, so without getting into the intricacies of banking law and Arkansas securities law, can you give us the bottom line? At the time you thought it was entirely appropriate that the bank could in fact raise funds through this mechanism. Has there been anything that has come to your attention in the 10 or 11 years since that would change that contem-

poraneous opinion of yours with respect to the appropriateness of this procedure?

Mr. MASSEY. Mr. Ben-Veniste, I haven't had an opportunity to research the issue, but at the time I believed it was a slam dunk. I think it was an easy, easy piece of legal work. I think that they agreed with us because they really didn't have much choice. It was a pretty simple analysis.

Senator SARBANES. Actually, you took the position that they had little, if any, discretion to disagree with your interpretation of the statute, did you not?

Mr. MASSEY. Yes, sir, I agree with that.

Senator SARBANES. So that from your point of view, the law was very clear on this matter?

Mr. MASSEY. Absolutely.

Mr. BEN-VENISTE. Now with respect to Mrs. Bassett Schaffer and her approach to the Madison Bank question—and indeed, I would expect that at some point we will have Mrs. Bassett Schaffer before this Committee, sometime soon I hope, since she would be in a position obviously to answer any questions about what occurred in the conference call that is referenced in the time records that were alluded to previously. You had no specific recollection of being in that conference call.

Let me ask you, as a matter of procedure at the Rose Law Firm, if two attorneys are conferring with one another or conferring with a client, was there a practice about whether the client would be billed for both attorneys' time?

Mr. MASSEY. Sir, probably.

Mr. BEN-VENISTE. Do you know?

Mr. MASSEY. I don't know that.

Mr. BEN-VENISTE. Who would be the best person to provide the answer as to the practice of the Rose Law Firm with respect to such billing matters?

Mr. MASSEY. Probably the managing partner in the firm who is here with me today.

Mr. BEN-VENISTE. That would be Mr. Clark who is sitting here in this room?

Mr. MASSEY. Yes, sir. Yes, sir.

Mr. BEN-VENISTE. Now——

Mr. MASSEY. I will be glad to ask him if that's appropriate. Whatever the protocol is.

Mr. BEN-VENISTE. Well, we have his testimony and I can tell you that his testimony is that the firm practice was not to double-bill the client, but perhaps at some point, we will hear directly from Mr. Clark.

Mr. MASSEY. Double-bill? Well——

Mr. BEN-VENISTE. With respect to Mrs. Bassett Schaffer and her approach to the firm, we've heard the figure——

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Could I interrupt for just one second? Mr. Chairman? Mr. Chairman? If I could interrupt one second, why don't we have Mr. Clark join Mr. Massey at the panel here? We have his documents. We are asking questions, someone is sitting in the room, he has been deposed, he can shed light on the matter. Why

don't we have him sit at the table so we can get the benefit of having—

The CHAIRMAN. Senator Dodd, we addressed this before, and the reason is we are going to examine Mr. Clark very thoroughly, very comprehensively, and we have other witnesses who have important information, and Mr. Massey is going to be here for awhile. If there are questions we want to raise with Mr. Clark, we will do it, but we are not going to do it today. We are not prepared, to be quite candid. Our investigators have more work and others to interview.

Now let me say this. If Mr. Massey cannot tell you about a particular incident with respect to the billing, that's fine, we accept that. We can still proceed. So there may be areas which are beyond, those are open questions, we will get to them.

Senator DODD. But Mr. Chairman, if we have, with all due respect, a more knowledgeable witness in the room who can shed light on the particular question, why wouldn't we ask that witness?

The CHAIRMAN. Again, you know what? I think we understand one of the areas that we are looking at, and the question is, did Mr. Massey bring in Madison as some have indicated or as the First Lady has contended. I mean, that is really the issue. In terms of how much work did he and/or the First Lady do, who is responsible for bringing Madison in as a client, that's what we're going to concentrate on, and we're going to spend some time on this.

Senator DODD. He's already testified, Mr. Chairman—

The CHAIRMAN. We're not finished. And the fact of the matter is, I think Mr. Massey, you indicated you didn't know Mr. McDougal, did you?

Mr. MASSEY. No, sir.

The CHAIRMAN. You've never met him?

Mr. MASSEY. Yes, sir, I've said that.

The CHAIRMAN. You didn't sign a \$2,000 retainer agreement?

Mr. MASSEY. I'm not sure there even was one.

The CHAIRMAN. So you had no knowledge about this, did you?

Mr. MASSEY. No.

Senator DODD. Mr. Chairman, my point in the question—

The CHAIRMAN. We're going to have a time—

Senator DODD. Let me just make a point. Last evening I watched the news, and the nightly news, this morning's news, this morning's newspapers, sort of hyping the hearing that we were going to have a witness here that was going to contradict Mrs. Clinton. That was the news before the witness even appeared here, that we were going to have direct conflict on testimony. We have Mr. Clark here, who goes through and understands the billing process. He's been deposed. We all have the benefit of his deposition. Why not have him at the table here so when the questions are asked if he can offer some additional information, we have the benefit of that?

The CHAIRMAN. I know we're not prepared to examine Mr. Clark, but I think the question is whether, as claimed in depositions and statements, Mr. Massey was responsible for bringing in the business, and that's what we're examining. Now, Mr. Massey has indicated he was not responsible for bringing in the business.

Senator SARBANES. Mr. Chairman—

The CHAIRMAN. We're going to proceed on that. If we finish examining Mr. Massey, and there are other areas and we have time,

then, we'll get into that, but this is the witness. The witness is not Mr. Clark. This is the way we're going to proceed.

Senator DODD. Mr. Chairman, I am not suggesting that, but this witness was never deposed. At least we have the deposition of the other witness potentially.

The CHAIRMAN. But I am not interested at this time in terms of what Mr. Clark does or doesn't know. I am interested because, number one, it's been alleged that Madison became a client of Rose Law Firm, as a result of Mr. Massey's acquaintance with various people. We're attempting to find out whether there was a friendship and Madison retained this law firm as a result of Mr. Massey.

And I believe we have heard his testimony but we are going to examine how much work he did and under whose supervision.

Then we will bring in and address some very specific questions with Mr. Clark relating to the records and the handling of the records—whether, for example, after a period of time a law firm regularly reviews and throws out old files or whether it was unusual. We'll get to that and we'll spend a lot of time with Mr. Clark, but not now.

Senator DODD. Mr. Chairman, I'm sorry to hear that. With all due respect, it seems to me if we're trying to get at the answers here, we have the benefit of discussing this matter, to get the managing partner of the Rose Law Firm, a deposed witness sitting in the room here who could possibly shed some light on this entire process, and frankly I'm just mystified over why we wouldn't take advantage of that opportunity here with people from the law firm to ask them questions.

The CHAIRMAN. He was not scheduled—

Senator DODD. It doesn't make sense to me.

The CHAIRMAN. He wasn't scheduled. Number two, if we get into those areas relating to his billing and if we have time the Chairman might consider bringing Mr. Clark up at the end and if there are pertinent questions, I will consider having another panel here today and we can examine it, but understand that we will bring him back then again in light of the fact there is still information that we have to look for.

Senator SARBANES. Mr. Chairman, that would be fine. We need to develop this matter in an orderly fashion. You had one of your Counsel on national television last night saying Mrs. Clinton's lawyer should be worried about a perjury charge. There's no basis for that in the record. That's judgment first and facts later, and we need to develop the facts here and we need to develop a comprehensive and thorough picture.

Mr. Massey is here on a number of issues, including these billing records, and we need to find out what happened. We get these wild allegations being made, then when we finally get the facts we find that the wild allegation was never substantiated, but you never catch up with it because it's out there. And I understand that game. We had a smoking gun here about these Madison records, that they came out of Foster's office, Kendall was fortunately here that day and said no, they came from Hubbell, end of that smoking gun. Now all I'm saying is I want—

The CHAIRMAN. Let me indicate something—

Senator SARBANES. I want to get the facts and I don't want to make judgments until we have the facts. Now when we have all the facts, I'm prepared to make the judgments, tough judgments if they have to be made, but I want the facts first. And this business of, in effect, reaching conclusions and then putting those conclusions out before we ever have the facts is backward. That's not the way to do a fair, thorough hearing, which is what you indicated you've been committed to doing. And to put Counsel on national television making those kind of statements is clearly a violation of an orderly process.

The CHAIRMAN. Let me make an observation so that you can continue. Number one, Mr. Clark was not involved in the underlying Madison work. I mean, that's a fact. Number two, he was not the managing partner in 1985-86. Number three, we have other facts that we are developing so that when we bring Mr. Clark in, we know exactly where we're going. Number four, if there are some pertinent questions concerning Mr. Massey's testimony, if we have time, I'm willing to bring up Mr. Clark today. However, I want to serve notice that that does not mean we're not going to bring him back again, because—and particularly our questions about the handling of the files, the Madison files in particular, not these billing records or not circumstances under which the Rose Law Firm came to represent the Madison Bank. We are here particularly to find out whether Mr. Massey did bring in the business as claimed. That's what we're going to pursue.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Chairman, may I respectfully request that 15 minutes be put back on my time.

The CHAIRMAN. No, but I am going to give you additional time. We're certainly not going to cut you off. Go ahead.

Mr. BEN-VENISTE. Thank you.

I was asking about Beverly Bassett Schaffer and her approach to the Madison issue, and we heard earlier today a reference being made to a \$60 million loss occasioned by Madison Bank when it was finally taken over. Now, you were familiar contemporaneously with events that went on regarding regulation of the bank, if not in terms of the actual work you did but certainly as an interested spectator to events?

Mr. MASSEY. Sir, my only knowledge would have come from the newspapers.

Mr. BEN-VENISTE. Right.

Mr. MASSEY. But it was a pretty big event in Little Rock.

Mr. BEN-VENISTE. Are you aware of the fact that Mrs. Bassett Schaffer had recommended that the bank be taken over back in 1987 but that the FDIC did not have the funds to make good on the depositors' interests; and, therefore, for 2 years following Mrs. Bassett Schaffer's recommendation, the bank remained open?

Mr. MASSEY. I've read that in news articles.

Mr. BEN-VENISTE. And have you also learned that as a result of the 2-year delay from the time Mrs. Bassett Schaffer recommended that the bank be closed until the time it was actually closed, some \$75 million of the loss is attributable?

Mr. MASSEY. I can't testify to that. I've read that in the papers.

Mr. BEN-VENISTE. So that this \$80 million figure and the cost to the taxpayer is a much more complicated question, would it be fair to say, involving national politics, the whole savings and loan fiasco that occurred in the mid- and late-1980's?

Mr. MASSEY. My own impression, sir, is that the State had little regulatory authority with respect to this or any other State-chartered S&L, that their primary regulator were Federal authorities.

Mr. BEN-VENISTE. But as far as Mrs. Bassett Schaffer was concerned, she was prepared to have and, indeed, had recommended that the bank be taken over 2 years before it actually happened?

Mr. MASSEY. That's certainly possible.

Mr. BEN-VENISTE. Now let me go to the question of the documents which were received from Mr. Kendall. If I understand your testimony here today, you had a complete set of all of the work that you had performed for the Madison Bank in your possession continuously at the Rose Law Firm.

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. So that any implication that the only records relating to the work performed by the Rose Law Firm for the Madison Bank had been spirited out in the dead of night and that there were no more copies of those records is false to your knowledge?

Mr. MASSEY. To my knowledge.

Mr. BEN-VENISTE. Did you compare—

Mr. MASSEY. I can speak with absolute certainty with respect to my files.

Mr. BEN-VENISTE. And so there was no question whatsoever that a full record of the work performed by you was, in fact, intact and available to any investigators duly authorized to ask for that material?

Mr. MASSEY. Excuse me, I'm sorry?

Mr. BEN-VENISTE. That it was available to any investigators duly authorized to ask you for that material?

Mr. MASSEY. Sure.

Mr. BEN-VENISTE. Now—

Mr. MASSEY. And presented to them.

Mr. BEN-VENISTE. As I understand your testimony further given today that no one asked you to make up any story about your work for Madison Bank, including how that matter was generated, the work that you did, how it came into the firm, or any other such thing.

Mr. MASSEY. No, sir.

Mr. BEN-VENISTE. Are you aware of the fact that a billing recap was created by the Rose Law Firm reflecting the work done for Madison?

Mr. MASSEY. Yes, sir, I've seen it in the hearings.

Mr. BEN-VENISTE. And indeed in our hearings and particularly Senator Bennett had paid close attention to that document. Do you have it before you, sir? Let me give you another copy to save time. Here's another copy of that billing recap. This is the document I believe that Senator Bennett and others referred to earlier in these proceedings some weeks ago. Do you know who prepared that document?

Mr. MASSEY. Sir, I believe Mr. Clark did.

Mr. BEN-VENISTE. The managing partner who is here?

Mr. MASSEY. I believe he did.

Mr. BEN-VENISTE. Do you know whether since the actual computer printout had been located, whether there has been a comparison made to determine the accuracy of that recap by comparing it to the actual billing records?

Mr. MASSEY. I'm not aware of that.

Mr. BEN-VENISTE. Are you aware that Mr. Clark has done that?

Mr. MASSEY. Not aware of that.

Mr. BEN-VENISTE. Only Mr. Clark would be in a position to provide us that evidence?

Mr. MASSEY. I sure can't. I would be happy to do it, but it would probably slow you down.

Senator DODD. Mr. Chairman, can't we ask Mr. Clark that? He's in the room here.

The CHAIRMAN. Let me again indicate that is not the area that we are exploring.

Senator DODD. But the question has been asked though, Mr. Chairman.

The CHAIRMAN. I do not believe that we indicated that we were going to call Mr. Clark today. He was just deposed Friday. Indeed, we just received yesterday the transcript of the deposition, given the weather conditions. I guess there was a little delay. We will examine Mr. Clark but we are not prepared to do so at this time.

Now if this is an attempt to bring in someone to detract from our examination of Mr. Massey—I hope that is not the case—and to address areas that are not relevant, that the witness—because to be quite candid with you, we're not examining him on records that he is not familiar with. If he says he's not, we leave it.

We will hear from Mr. Clark, but we're not going to split this up. We're going to examine this witness, he is key, he is important, because again it was alleged that he's the person that was responsible for bringing in the Madison account, and that's where we're going. We will address the work that he personally did, not whether he knew about the recap and when the recap was made. We will get to that and Mr. Clark will have an opportunity, but not now.

Senator MOSELEY-BRAUN. Mr. Chairman—

Senator DODD. The point I'm trying to make, Mr. Chairman, is the question has been raised by Counsel here. He asked the question. We have a witness in the room who has been deposed.

The CHAIRMAN. Well, it's very easy to ask a question that is not relevant or that is outside the scope of his knowledge and then we could get two or three or four different people in. I mean, that's just not what we are going to do. We are not prepared to call Mr. Clark in today. Indeed, I don't know why he's here. I don't think that we called him to be here today or indicated that he was going to be here today, so I think it's quite unusual.

It might not be insofar as he may have wanted to accompany his partner and his associate here to these hearings to provide comfort, but under no circumstances were we prepared to go forth with his information. We just got the deposition back yesterday, so we have not had an opportunity to prepare ourselves to examine Mr. Clark. We will ask Mr. Clark questions about the methodology of record-keeping, how records were kept, who gave the orders for the dissemination of various files, or for the destruction of files, and was

it done in the ordinary course of business? So we will spend some time examining him.

Yes, Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Mr. Chairman, in the first instance, Mr. Massey has never been deposed and yet we're proceeding with an examination of him, and it seems to me that in terms of economy, that if Mr. Clark were asked questions today, that's not to preclude a more thorough and comprehensive examination of that witness at a later time, but I would make the basic point, Mr. Chairman, that if we are to conduct these hearings as actual fact-finding and not just political theater, I think it is important that we are able to wrap a ribbon around and conclude a particular line of questioning when the resources are available to us.

The fact that Mr. Clark is here, it seems to me again—obviously he can be called more than once. It would not preclude him being called at a later time if he were to fill in and answer that which Mr. Massey as a witness, again not having been deposed, can fully answer at this time.

The CHAIRMAN. There were no surprises about Mr. Massey being called today, and I don't think that my friends and colleagues on either side would proclaim that to be the case. Mr. Massey has given and we have received two sworn statements which are the subject of our review, statements that have been made about him, statements that have characterized his work, and I will not allow our focus to be diverted from what Mr. Massey knows, what he did, what business he conducted, how the business came about. We will focus on that.

Mr. Clark may be the managing partner but we are not interested right now in his testimony because we have not even begun to prepare our questions for him. We know he will be here, but to bring him in today would distract us from our main task, to ascertain the truthfulness of the statements and the characterizations that have been made concerning Mr. Massey's role in bringing in the Madison business and we will remain on this topic.

Now, I don't know what Mr. Clark can testify about with regard to bringing in the business. Maybe he is going to say that he knew that Mr. Massey was the reason they brought in that business. Well, he will have an opportunity to say that, but not at this time.

Senator SARBANES. Mr. Chairman, one of the issues that's been raised very publicly by a number of people on the Majority side is the billing question as between Mr. Massey and Mrs. Clinton. That has been worked over heavily in the press.

The CHAIRMAN. Mr. Massey has testified—

Senator SARBANES. Mr. Massey can address that and Mr. Clark can address that, and we could get that straightened out on this billings question which you're constantly making reference to, and I think inaccurate references are being made and misrepresentations, but I would like to get people at the table who can lay that out for us.

The CHAIRMAN. I'll be very happy to set aside sufficient time next week for Mr. Clark to come in and to answer any of those questions that remain open which Mr. Massey was not able to address. To

be quite candid with you, I'm not interested in the recaps of the billing records because Mr. Massey indicates he has no knowledge of them. That's fine, and we're not going to waste the time of the Committee in an area that will divert attention from our main focus, which is what does he really know.

Senator SARBANES. I assume he knows about his billing in relationship to Mrs. Clinton's billing.

The CHAIRMAN. He knows about his billings and certainly he has testified about his billings. There is no question as to the records he has and billings he has. As it relates to the recaps, that is something he's not familiar with, and we will address that when Mr. Clark is called. That's no problem, and furthermore, we will bring him in here next week.

Senator SARBANES. Of course one way to address the recaps is to go behind them to Mr. Massey and other relevant persons.

The CHAIRMAN. That's fine. Mr. Massey certainly can and should answer, and I know he will, any question about his actual billings that he put down and he's responsible for. But you can't ask him questions about another witness. Why not ask him questions and say well, another partner knows about that so let's bring that partner in. So let's stay on the issue.

Again, we will bring Mr. Clark in. As a matter of fact, if he's here, we'll see if we can work out a time to accommodate him and his schedule for next week, possibly next Thursday. If he wants to do that, we'll be happy to have him here next Thursday, so we'll have ample time to get to all of the questions about the recap on the billing.

I think you should be accorded additional time obviously, so why don't you continue.

Mr. BEN-VENISTE. You were asked about the direct investment rule and information that you had learned about that rule. Now, Mr. Thrash at the firm was the partner who had been involved in the matter, to some extent, called IDC; is that correct?

Mr. MASSEY. That's apparent from the record, sir.

Mr. BEN-VENISTE. Did you ever, to the best of your knowledge, have any conversation with Mr. Thrash about the direct investment rule?

Mr. MASSEY. As I testified earlier, no.

Mr. BEN-VENISTE. All right. So there was a disconnect, to the best of your knowledge, as between any conversations that you had, in the context that you had them, about the direct investment rule and any work that Mr. Thrash may have been doing?

Mr. MASSEY. Sir, we didn't give Madison regulatory advice as far as I know. We weren't their outside regulatory counsel.

Mr. BEN-VENISTE. I think that is an important question that hasn't been addressed yet. It is correct, is it not, that the Rose Law Firm was not the principal outside lawyer for the bank; is that right?

Mr. MASSEY. It's my understanding, from the conversation that I have referred to in my testimony earlier with Mr. Latham, that another firm in town had a much more prominent relationship with the S&L.

Senator SARBANES. The bulk of the work was done by lawyers and other law firms, not the Rose Law Firm?

Mr. MASSEY. I don't have personal knowledge of that, but that's my understanding.

Mr. BEN-VENISTE. With respect to the question that has been raised about document retention and files that are either existent or missing, these are transactions which occurred 10 and 11 years ago; correct?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. Are you aware—and this is a very important issue—are you aware from your own personal knowledge as to whether the detailed bills that went to the Madison Bank, relating to the matters that the Rose Law Firm worked on in 1985 and 1986, are in existence?

Mr. MASSEY. No, I'm not aware of their existence.

Mr. BEN-VENISTE. Do you know that Mr. Clark or others at the Rose Law Firm have been advised or shown the records—

Mr. MASSEY. Yes.

Mr. BEN-VENISTE. —relating to the Madison bills?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. Not just the time records that are before you, but prior to the discovery of the time records, do you have reason to believe, on the basis of your conversation with your managing partner and others at the firm, that those records have been shown by either officials of the FBI or the Independent Counsel to members of the firm?

Mr. MASSEY. Sir, I'm not sure if those records are comprehensive and speaks to all of the bills, I'm not sure if that's correct, but I understand that some of the bills are in the possession of the various regulatory agencies that have been investigated.

Mr. BEN-VENISTE. My question was not meant to say that every single bill for every month and every matter, but are you aware on the basis, not of your direct knowledge—I want to make that clear—but on the basis of what you have been told by others in your firm, including Mr. Clark, that these records, at least in part, are in existence and have been shown to members of the firm?

Mr. MASSEY. Yes, Mr. Ben-Veniste.

Mr. BEN-VENISTE. A question has been raised about the procedures for document retention in the firm; that is, every firm at some point will destroy records or put them on microfilm or do something else with them. Are you the person who could best inform us about what the procedures were, and are, at the Rose Law Firm with respect to document retention?

Mr. MASSEY. Sir, my partner behind me has probably spent the better part of his life understanding and testifying as to document retention at our firm and his knowledge of it eclipses mine.

Mr. BEN-VENISTE. You're referring again to Mr. Clark?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. Now, you were asked about other matters that Mrs. Clinton may have been working on. There have been statements by individuals associated with this Committee to suggest that the time reflected in—either timesheets or billing records of Mrs. Clinton reflects work done by Mrs. Clinton on the Castle Grande project.

Let me ask you, sir, whether you are the best person to interpret those time records from the Rose Law Firm among the partners

who could provide information to this Committee regarding the interpretation of those bills as they relate to work done or not done on the Castle Grande matter?

Mr. MASSEY. I had no involvement in Castle Grande, so I would be happy to try to understand those entries and interpret them. Frankly, I think those are outside of my personal knowledge.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

Mr. Massey, I want to raise questions about the issue of how Madison came to be a client, and also, who did certain work. The way I would like to begin, frankly, is to show a video of a press conference of the First Lady on the Whitewater affair on April 22, 1994, and then we'll work from that.

Senator DODD. So we get to have the First Lady here but not Mr. Clark; is that how it works?

PRESS CONFERENCE BY FIRST LADY HILLARY RODHAM CLINTON

THE WHITE HOUSE, APRIL 22, 1994

[FOLLOWING ARE EXCERPTS RECORDED BY THE NEW YORK TIMES]

Question: Since Whitewater's been in the news so much, I feel it's fair to ask you the same question I put to the President some time ago—and you were, are, a co-partner: Do you know of any money that could have gone from Madison to the Whitewater project or to any of your husband's political campaigns?

Answer: Absolutely not. I do not.

Question: Actually on this same theme, with your commodities profits, you know, it is difficult for a layman and probably for a lot of experts to look at the amount of the investment and the size of the profit. I mean, is there any way you can explain how you—

Answer: Well, I can certainly tell you what happened. And I appreciate your asking me about it, because I've tried to follow the accounting in the press about it, and I want to explain as clearly as I can what occurred.

Back in 1978, in October, one of our best friends, Jim Blair, who had been a friend of my husband's and mine for some time, talked to me about what he thought was a great investment opportunity. He is someone who has been an investor ever since he was a teenager with usually very good results. And he had followed closely what had been happening in the cattle market. And I only knew a little bit about that, although living in Arkansas, particularly northwest Arkansas, as I did, I was familiar with a lot of ranchers and people who were in the cattle industry. And when Jim said, "I think there's going to be a great opportunity to make money," and explained why and asked me what I thought we could afford to invest, I told him \$1,000. So I opened an account at his very strong recommendation and proceeded to trade over the next months, until July.

You know, not all my trades made money. Some of them lost money. I talked to Mr. Blair very frequently. In fact, Jim would call me on a regular basis, and I would make a decision whether I would or would not trade. And then the trade would be placed. Often he placed it for me. And there was nothing wrong with that. He was on the spot. He was often in the offices of the broker.

I stopped trading in July 1979. And I did stop trading in large measure because I could not keep up with it. It takes a lot of nerve to be in the commodities trading, and I'd just found out I was pregnant. And so when he called again, I said, "You know, I just don't want to do this anymore." And I think he may have even called a few more times, saying: "You know, it's really still doing well. Trade again." I didn't, and I'm glad I didn't because he and other friends of mine who were trading ended up losing money. So it was a good investment offered by somebody who knew a lot who could provide a lot of good advice, and I was lucky and made the decision to stop when I did.

Question: Do you understand this—if maybe your broker might have, because of your position or your husband's, might have given you some kind of unfavorable or, you know, favored advantage?

Answer: There's really no evidence of that. I didn't believe it at the time. As I said, you know, I made and lost money in that commodities account. It was my money, it was at risk. The account was in my name, I got the reports. We've released all of the documents we could find from that period from that account. So, no, I had no reason to believe that. And as Mr. Leo Melamed, the former head of the Chicago Mercantile Exchange, said when he looked at all of my trading records, there isn't any evidence that anybody gave me any favorable treatment. And even Mr. Blair, who ended up losing money, I think would find it very hard to argue that he got any favorable treatment. I just don't think there's any evidence there.

Question: Mrs. Clinton, you said you stopped trading in July of 1979. Could you talk about the second account that was opened?

Answer: Sure.

Question: There was a second account with the Stephens Company in which I think you invested \$5,000. And at first the White House claimed you lost money on it, but later you put out documents showing you actually made \$6,000 on it and didn't close it until a few months after Chelsea was born.

Answer: That's right. And I'm glad you asked that, because I really want to clarify it. I think there's been a lot of confusion. There were two accounts. The first account, the one that I was just talking about, was the Refco account. I traded in that from October 1978 to July of 1979, when I found out I was pregnant and I stopped trading. Now, I closed that account for good in October of 1979, and I took some of the money that I had made and put it into an account at Stephens. And at that point, I made that a discretionary account. My Refco account was a nondiscretionary account, which meant that I had to approve and give the go-ahead for every trade. In the discretionary account at Stephens, my broker made most of the decisions. I think he did a good job for me. He diversified the money that I gave him and put it into money markets and stocks and bonds, and \$5,000 into some commodities.

Now what happened then is—in retrospect, as I've been able to reconstruct it now—is that my broker made these decisions. He checked with me maybe a couple of times a month, but because it was discretionary he did not have to get my approval. And so money would be moved from one investment to another investment. And during the course of the time between October of 1979 and probably May of 1980, he had me in and out of three different commodity accounts in much smaller numbers than what I had been in charge of doing in my Refco account.

In February of 1980, my daughter was born, at the very end of the month. And I remember talking to my broker sometime after that and said, "You know, I just want to get out of commodities altogether. I don't ever want to have to worry about it." So he got me out of the positions that I had been in, so that by May I was no longer doing any kind of commodity trading in the Stephens account. Now what happened, though, is that he took the money that I now know I made—I really didn't think I'd made any money in commodities—and he bought some stock, and he did some other things for me.

Now in the fall of 1980, my husband lost his election. We moved. So by 1981, when I gathered all my documents together to give to my accountant, I had a year-end statement from Stephens which did not report anything about commodities. I had a year-end statement from the Peavey Brokerage Company which reported a loss, and I had no year-end statement from either Clayton or the company called ACLI. So I think what happened is we bundled all of the documents we had, because I took all of the reports that I had, gave them to the accountant, and I believe that in the absence of a year-end statement the accountant and my husband and I missed the fact that we had actually made some money in the ACLI account.

Question: Do you remember that profit?

Answer: No. I did not remember that profit. I did not. And in fact, as you said, when some people looking at the records for me began looking at it originally, they looked at the records and they thought I'd had a \$5,000 loss. And they came to me and said, "We think you had a loss which you didn't report." And I said, you know, I just don't remember. I thought I basically got out with what I put in. And then they went back and relooked at it again with, you know, more accountants, and they came up with the gain. So it was hard to find, apparently.

Question: With regard to the Refco account, just how did the procedure go? Did Mr. Blair basically recommend to you the transactions which you either said yes or

no to? Or was it based more on knowledge that you had gained—as some of your staff have suggested—from reading the papers, or whatever? What happened?

Answer: Well, Brit, it was primarily Jim's suggestion. But I also did try to educate myself. You know, I did try to read some things. He actually gave me a few documents to read. Because he had this theory that because of the economy in the early part of the 1970's, a lot of cattle herds had been liquidated, so that there was going to be a big opportunity to make money in the late 70's. And he gave me things to read about that. And I did occasionally read, you know, publications like *The Journal* and others and, you know, I tried to educate myself because I took the responsibility seriously. But I relied primarily on his advice, because he really spent an enormous amount of time studying the market and talking to many more people than I ever could have—people who, you know, ran feedlots or bought beef for large supermarket chains. So he would talk to me, and he'd say: "Here's what I think is going on. What do you think?" Now, I did not make every trade he recommended. And certainly, by July—when I began to, you know, get nervous about it—I stopped taking his recommendations, because I just couldn't bear the risk anymore.

Question: Did it concern you at the time that because of his position with the company that he represented, that there was an ethical question raised by your accepting this level of assistance in a financial matter from him?

Answer: No, it did not. And the reason it didn't is that he and his wife are among our very best friends. My husband performed their marriage ceremony. I was the best person at the wedding. We are very close friends. And I found it a little bit surprising that anyone would suggest that, because in 1980, right during the time that this was all going on, when my husband ran for re-election, Tyson supported his opponent. So there's really no basis for suggesting it was anything other than what it was, which was a friend who made a suggestion—and not just to me, but to a number of people—which I think was, you know, very fortunate for me.

Question: You said that there was no preferential treatment in all of this. The records indicated that your account was short of money at various points. Were there margin calls? And did you meet any of those calls? And were you aware at any time that Refco was coordinating trades to drive prices up or down?

Answer: No, I was not aware of that, Andrea. I was told that after I stopped trading some months later. And I know there were lawsuits filed alleging that. I don't think any of that was ever proved, at least that I'm aware of. And when my position was under margin, I would either close out my position or use the equity that I had—and I think Mr. Melamed said, based on his review of the records, there were a couple of occasions when I was under margin. Nobody ever called and asked me for anything. They just, I guess, took the money that I had in the account and closed out the position. But that was the responsibility of the broker. And from what I know, they were doing so many trades and there was so much volume going through that I was a relatively small customer. I mean, it was very big money for me and my family, but it was a very small account, and I don't think they paid any attention to my particular situation.

Question: Why do you think that they gave you this treatment with you being such a small customer? Don't you think that was preferential treatment—

Answer: No.

Question: —based upon who you were and who your husband was?

Answer: No. I really don't believe that. I don't think there's any evidence of that. You know, from what I know about commodity trading and what I know about the cattle market during that period of time, they were just buying and selling on a huge basis, day in and day out. And I think that they may have not gotten around to the paperwork. They may have not thought it was worth it. They may have seen that I was a regular customer and that I covered my losses, that there was never an occasion when they really had to be concerned about it. I can't read their minds or speculate, but I had absolutely no reason to believe that I got any favorable treatment. And the fact that I closed the account out and took my money, whereas the people whom I knew were much bigger traders like Jim Blair and others—they lost money—and why would Jim Blair try to help me get favorable treatment that he couldn't get for himself? I mean, it doesn't make any sense to me at all.

Question: Mrs. Clinton, one of the things that has made all of this so controversial is the shifting accounts of what happened. Because initially the White House explained that you were consulting Blair and many others and reading *The Wall Street Journal*, and then later had to correct that. And we found out that Mr. Blair was in fact most often placing your trades for you, phoning the trades in. Why was

the account—why did the account have to be corrected? Why was it not explained accurately the first time?

Answer: Well, Linda, I think it is because, you know, we're trying to reconstruct events of, you know, 15, 16, 17 years ago. There are a lot of people who are trying to help. But until relatively recently there wasn't any one person in charge of trying to get everything together and get the, you know, information as accurate as possible. I think the people in the White House did the best job they could. I think that we did the best job we could trying to remember things and oftentimes having to search to see whether we had any records. I mean, I don't know how many of you keep, you know, records from 1978 or 1979, but, I mean, we went through a lot of effort to try to see whether we had anything so that we could answer questions and then make things available. Sometimes we'd find part of something. Sometimes we'd then find the rest of it. So I appreciate and understand the concern about, you know, why we would have to add information or go back and say, "Well, this needs to be corrected."

But the fundamental facts have not changed. I mean, the fundamental facts are, as I have said: I opened an account with my money. I made the trades. It was non-discretionary. I took the risk. I was the one who made the decision to stop trading. And that I did rely on Jim Blair. I used some other advice as well, but he was my principal adviser in this.

Question: But that wasn't a question of documents, that particular fact, the fact that he was really driving the trading for you. I guess I wanted to re-ask that question again. Why—that would be something you would remember or not remember without documentary support—so, why was that fact not made clear? And were you essentially riding on his coattails when you traded?

Answer: No, I wasn't. I was riding on the money I invested. You know, I don't know how any of you make investment decisions, but I like to listen to people I know and trust who I think know what they're doing. And he was somebody who I very much thought knew what he was doing and was more than willing to share his information, not only with me but with many people: Members of his family and other of his friends. And it was for all of us a decision to put ourselves basically at the mercy of the market. And as Jim Blair found out, he wasn't always right. He lost a lot of money. And I was lucky—I didn't. But that was my decision.

Question: Mrs. Clinton, a number of your old friends in Little Rock—Warren Stephens, who I guess is an old friend; Curt Bradbury, Bill Bowen, people like that—had a meeting on March 31. And they decided that really Arkansas has taken a beating—portrayed, in the words of one of them, as a moral and ethical backwater—basically because people hear us saying, "It was done that way in Arkansas." How do you feel about what's happening down there and what's happening to those people who feel they're being hurt by events out of their control? And they feel that they're not really being—the State is not really being—defended by you and your husband. I wonder if you'd address that.

Answer: Well, I feel very bad about it, because I think Arkansas is a wonderful place and filled with some of the best people I've ever been privileged to know or work with. And I do think that many of the charges have been very unfair and have really lacked any historic or realistic context. I don't think it's necessary to point fingers at any other State in the Union to say that, you know, every place there are people who have problems and there are people who cause problems. And I think that, you know, the State of Arkansas is a place that has, you know, just so much to be proud of. So I hope that we can get back to a more realistic assessment of what goes on there.

Question: May I follow?

Answer: Sure.

Question: They've said—and specifically Bradbury and Mr. Stephens have said—that to a certain extent they feel you've brought this on yourself, the two of you, because of campaign statements about a decade of greed and just things that they feel, in their words, make it look like hypocrisy: That you were into go-go trading. You were trying, as you said, an opportunity to make money, just as they were. And they felt like they had been condemned by you—that people like that had been condemned by you during the campaign and that now you were being shown to be doing the things you spoke against.

Answer: Well, Curt and Warren have never said that to me, so I'll have to take your word for it. But I do think you raised an important question that I would like to talk about a little bit. You know, I was raised to believe that every person had an obligation to take care of themselves and their family. And that meant, you

know, earning an income and saving and investing. I was raised by a father who had me reading the stock tables when I was a little girl, and I started doing that with my daughter when she was a little girl. I don't think you'll ever find anything that my husband or I said that in any way condemns the importance of making good investments and saving or that in any way undermines what is the heart and soul of the American economy, which is risk-taking and investing in the future.

What I think we were saying is that like anything else, that can be taken to excess. When companies are leveraged into debt, when loans are not repaid, when pension funds are raided—you know, all of the things that marked the excess of the 1980's are things which we spoke out against.

I think it's a pretty long stretch to say that the decisions that we made to try to create some financial security for our family and make some investments come anywhere near there. I also think that my husband and I made different choices than to concentrate on making money during the 1980's. We obviously wanted enough financial security to send our daughter to college and put money away for our old age and help our parents when we could. But we were primarily interested in, in his case, trying to provide opportunities for people in Arkansas and make a difference in their lives. What I tried to do both to help him and to work on behalf of children or education reform was what was really important to us. I think that is, you know, something that needs to be put again in a proper perspective.

Question: In the same vein, somewhat in the same vein, you were reported to have opposed a special prosecutor, at least in the beginning—and some of the release of tax documents—on the basis of privacy, that you felt you had a right to privacy. Do you think that that helped to create any impression that you were trying to hide something?

Answer: Yes, I do. And I think that is probably one of the things that I regret most and one of the reasons why I wanted to do this, because I've had to really do a lot of thinking the last couple of months. You know, again, I was raised to really believe that what was important was what you thought about yourself and how you measured up to the standards you set for yourself. And I think if my father or mother said anything to me more than a million times, it was don't listen to what other people say, don't be guided by other people's opinions, you know, you have to live with yourself. And I think that's good advice. I mean, I'm glad I got it as a girl growing up, and I've passed it on to my daughter. But I do think that that advice and my belief in it, combined with my sense of privacy—because I do feel like I've always been a fairly private person leading a public life—led me to perhaps be less understanding than I needed to of both the press and the public's interest as well as a right to know things about my husband and me.

So you're right. I've always believed in a zone of privacy. And I told a friend the other day that I feel after resisting for a long time, I've been re-zoned. You know, and I now have a much better appreciation of what's expected, and not only what I have done—because I am extremely comfortable and confident about everything that I have done—but about my ability to communicate that clearly and to give the information that you all need.

Now, to your other question, about the special counsel. I was not the only one of my husband's advisers who questioned the idea of a special counsel. I think that those of us who did were concerned about the precedent that would be set by having such an appointment made when none of the existing standards that had always been in place had been met. There was no credible allegation—you know all of the things that usually are required. So I was questioning of that. But the President made the decision that we needed to get on with the business he came to Washington to do and that this was an important step to take, and I respected that decision.

Question: Mrs. Clinton, do you know anything about Mr. Foster's death? Do you know what he wanted to tell the President that he didn't get to tell him?

Answer: You know, I don't know that he wanted to tell the President anything. That's the first I've heard of that. My memory is that the President actually talked to Vince Monday night, before he died, and when I talked with the President afterward he was stunned because the conversation was a very normal kind of a conversation. So I don't know.

Question: Well, I understood they made an appointment to talk not the next day but Wednesday, and that would have been the day after he died.

Answer: I don't know. I don't know.

Question: Mrs. Clinton, my question—I'd like a follow-up too. The first one has to do with Susan McDougal. She said that she brought the document of Whitewater

over to you at the Governor's mansion. Did you receive all the documents? And if so, what became of them?

Answer: I don't believe that we received all the documents in that way. Over the past several years, we have made a very deliberate effort to try to obtain documents. And every document that we have obtained has been turned over to special counsel, no matter where it came from.

Question: My follow-up has to do with the death of Mr. Foster, the way his office was sealed or the people who were in it. There's been a lot of criticism of the papers in Mr. Foster's office—that some may have been removed.

Answer: Well, I know there's been a lot of concern and criticism about that. I cannot speak to that in any detail. But I know that the special counsel is looking into the circumstances surrounding Mr. Foster's death, and I assume he will issue a report about that which I hope will put all these matters to rest once and for all.

Question: You said that—just now—that you'd decided that \$1,000 was as much as you could risk. Can you tell us what your understanding was of how much you could be at risk with the little amount of money that you and your family had then? We were told earlier that \$1,000 was what you were asked to put in. And second of all, can you give us some explanation—given that a cattle contract at the time, just one contract, was \$1,200—for the mystery of the \$5,300 that was made really in the course of one day, or at least a few days, in the first trade?

Answer: No, I can't. I do not remember any of those details. I've given you every record that I have about that. The \$1,000 was what I wanted to start with. And it was what I thought was a good beginning, a good investment for me. And once I had made the initial return that I did, I reinvested that. This was a roller coaster, and what I believed was that I was getting very good information and that I would end up making money. But there were a couple of days when I lost money. And I knew that I would be responsible for any losses that I suffered. But I did reinvest, and I covered the losses by closing positions. And then I eventually stopped trading.

Question: But when you first started with \$1,000, did you believe you were putting at risk more than \$1,000?

Answer: I believed that was certainly possible, yes.

Question: Then why did you take such a risky investment?

Answer: Because I didn't think it was that big a risk, because I thought that Jim and the people he was talking with knew what they were doing. And, you know, I've read a letter to the editor that somebody sent me from one of your newspapers, I think, which talked about a woman who invested \$1,000 during the same time and made \$750,000. Well, she had a stronger stomach than I did. I couldn't do that.

Question: The Whitewater development was set up, as you say, as a 50–50 partnership between the Clintons and the McDougals, meaning that you were liable for 50 percent of the losses or 50 percent of the gains. Yet, by your own accounting, you lost half or even maybe a third of what the McDougals lost. This is according to the Lyons Report. Doesn't that discrepancy represent some sort of a gift or gratuity?

Answer: No. And let me say that, yes, the ownership of the corporation was 50–50. The liability on the underlying debt was 100 percent for each one of us. I mean, there was no gift in that. When my husband and I signed that mortgage, and when we re-signed guarantees, we assumed the whole responsibility. I mean, if Jim had gone into bankruptcy early on, if Susan had left, we would not have only 50 percent of the obligation; we would have 100 percent of the obligation.

Question: But why was it that the McDougals lost so much more money than you did? I don't understand it.

Answer: I can't answer that. I mean, we gave whatever money we were requested to give by Jim McDougal. I mean, he was the one who would say: "Here's what you owe on interest. Here's what your contribution should be." We did whatever he asked us. We saw no records. We saw no documents. He was someone that my husband had known a very long time. He was someone who had been in the real estate business with many people we knew, including Senator Fulbright, and we just assumed that whatever he needed he would ask for. And we didn't have any information to the contrary.

Question: It's just that given that you were jointly and separately liable for all the debt and that you and your husband are both lawyers, that you would be so passive about a fairly substantial investment.

Answer: Well, we were not real estate developers, and Jim had a track record. And I wasn't a cattle expert; I trusted Jim Blair, and it worked out for me. And I wasn't a real estate expert, and we lost money. Those things happen.

Question: Mrs. Clinton, just to get back to Linda's earlier question. One of the things that has been driving this is either the lack of explanations or the shifting explanations. And in terms of the way that your commodities trading was first described: That you did the trades, you relied on some advice from Mr. Blair. Later it was revealed that Mr. Blair placed most of the trades, if not all of them. Can you explain what happened? Did you have a new recollection? Why the shift?

Answer: Well, if you just listen to what you said: I did the trades. They were my trades. I was responsible for them.

But I did them on the advice of Jim Blair. And very often he placed them for me. I'm not in any way excusing any confusion that we have created. I think we have created it because I don't think that we gave enough time or focused enough. I have been traveling, and I'm more committed to health care than anything else I do. I probably did not spend enough time, get as precise. Different people heard different things that I said, or by the time it got passed to the third or fourth person, or one member of the press would call somebody in the White House but somebody else would call another person. So I think that the confusion was our responsibility. We did not give you a focused place to come, and we did not spend the time necessary. There's not really a contradiction in what you said and what I said. But I can understand how somebody might assume that.

Question: Now that we're clearing up a lot of confusion, I'll ask you about one other thing that I've had problems with. During the campaign—I think it was right after the primary debate between Jerry Brown and your husband—you made a statement in, I think, a Chicago restaurant that you never did any regulatory work for Madison Guaranty. When the letter went to Beverly Bassett Schaffer about perhaps the legality of offering preferred stock, your name was at the bottom of that letter.

Answer: Right.

Question: Could you explain that?

Answer: Yes. I'm glad you asked that, because that's another thing that I feel has gotten confused in the telling. Let me just try to describe what happened there. When in 1985, I believe, maybe 1986, there was an effort made on the part of various financial institutions around the country to increase their capital net worth, they began looking for ways to do that. There was a very bright young associate in our law firm who had a relationship with one of the officers at Madison, a young man whom he had known. They began talking.

And if you'll remember what happened when the S&L's were deregulated, many States were left wholly unprepared: They did not have a regulatory system in place, they didn't even really have good laws. All of a sudden there was no Federal regulation to speak of, and so people were asking State governments whether things could be done.

Those two young men thought that it would be legal under Arkansas law for a savings and loan to issue preferred stock. But there was absolutely no law on that, and so they couldn't be sure. But they decided that what they wanted to do was to ask the person who regulated savings and loans whether it was legal—not if Madison could do it; that was the second step. The first step was could you even do it in Arkansas, whether you were A, B, or C, not just Madison.

When they talked about doing that, the young attorney in question needed a partner to serve as his backstop, and that was one of the rules we had in our firm. He knew that I knew Jim McDougal. He also knew that Jim had been a client of our firm in the past. This was not a new representation.

So he came to me and asked me if I would talk with Jim to see whether or not Jim would let the lawyer and the officer go forward on this project. I did that, and I arranged that the firm would be paid a \$2,000-a-month retainer. And that was ordinary and customary. That would be billed against, unlike retainers of some really big law firms that if you pay the retainer they keep it, no matter whether they do any work for you. This was really an advance against billing. That was arranged.

The young attorney, the young bank officer did all the work, and the letter was sent. But because I was what we called the billing attorney—in other words, I had to send the bill to get the payment made—my name was put on the bottom of the letter. It was not an area that I practiced in, it was not an area that I really know anything, to speak of, about.

At that point, the regulatory authorities—namely, Beverly Bassett Schaffer—answered the legal question. And the legal question was: Yes, it is permissible under Arkansas law to issue this preferred stock. Then the question moved on to the sec-

ond phase, in which I had no involvement that I have any memory of, or anyone that I have talked with. That was trying to determine whether Madison could go forward.

And I think that the Securities Commissioner acted absolutely appropriately. She answered the legal question: Yes, it is legal to do this. But as to Madison, she laid out conditions that had to be met for Madison to do it. And Madison could never meet those conditions, and so they never issued preferred stock. So the legal question was answered, but Madison got no benefit at all from the answer of that legal question.

Question: Can you clarify for us what documents were removed from Vince Foster's office after he died, and why they were there in the first place?

Answer: I can tell you what I know, which is I did not know Vince had any of the documents related to our personal business in his office until after his death. What I believe he was doing with them was serving as a coordinator among our private lawyers and accountants and certain Government officials, like the Office of Government Ethics, with respect primarily to our blind trust. Because there were all these questions that had to be answered and he was kind of the, you know, the coordinator. The private lawyers would talk to him; the Office of Government Ethics people would talk to him. I think that's why he had any documents of a personal nature in his office at the time of his death.

Question: Why did your chief of staff, Maggie Williams—why was she involved at all to remove these documents from his office within a day of his death?

Answer: I don't think that she did remove any documents. I think that what happened is that after Mr. Nussbaum reviewed the documents, and after he did so—as I recall, I was not here, I was in Arkansas—but I believe that was done in the presence of officials from the Park Police and maybe some other agencies. Then Mr. Nussbaum distributed the files according to whom he thought should have them. There were files related to ongoing work in the Counsel's Office that needed to be passed on to other lawyers, there were personal files of Vincent's that needed to go to his family, and there were these personal files of ours that went to our lawyers.

Question: Another question about this re-zoning of private and public lives: I'm wondering what kind of a toll, if any, this has taken on you, on your and the President's personal and political lives. And do you ever look in the mirror and wish that you'd just never got into this?

Answer: No, never. Never. I mean, some days are better than other days, but, you know, I think what has helped me in the last couple of weeks—aside from some good friends who have talked with me and helped me get re-zoned, if you will—is my belief that this is really a result of our inexperience in Washington, if you will; that I really did not fully understand everything that I wish now I had known. You know, it's a learning experience, sometimes a difficult one but I think one that both the President and I are anxious to do because we think that the reason he was elected was to deal with the big issues that we want the country to deal with. And so it is a little disappointing if we in any way contribute to a diversion from that. That's something I don't want to have happen in the future, and I'm certainly going to try to be more sensitive to what you all need, and what we need to give you, and do it in a more efficient and effective way the first time.

Because, as I said earlier, I feel very confident about how this will all turn out. This is not a long-term problem or issue in any way. But I don't want anybody to have the wrong impressions of either of us, and I don't want anything to interfere with doing what the people of this country need done.

Question: Mr. Clinton has spoken of the politics of personal destruction. Who do you believe are main perpetrators of that?

Answer: I don't want to get into that. I don't think that that bears any real useful discussion. I think that what's important is for us—not just the President and me but the entire Administration—to keep focused on what really will stand the test of history and what we really are trying to do for the country. And I can't really help it if some people get up every day wanting to destroy instead of build, or wanting to undermine. That's something that I try not to think about or dwell on, and try to do what I'm expected to do, which for me is working on health care.

Question: When was your last conversation with Vince Foster, and what was your understanding of the state of his mind?

Answer: You know, I've thought about that so many times. I don't think I had any conversation with him for at least 3 weeks before he died because, you know, we left for Tokyo somewhere around the Fourth of July is my best memory. And for

about a week before that, I was very preoccupied with getting ready for the trip and doing the things you have to do. So I don't have any memory of having talked to Vince, and I never talked to him during the time that I was gone. And like every one of our friends, you know, we relived everything that happened or didn't happen. The people who talked to him, the people who spent time with him, they question whether they said the right thing, whether they could have done something else. The fact that I didn't talk to him makes me wonder whether if I had called him I could have picked up a clue. I just don't have any way of knowing.

Question: It supposedly had been depression, or so we were told, for a considerable period of time. Were you ever aware of that?

Answer: No.

Question: Did you have any clue what was going on?

Answer: No. Neither did people who, you know, spent the weekend with him or saw him in the office that day. You know, one of the things that I've spent a lot of time doing in the last months is trying to educate myself about depression. And my good friend Tipper Gore has been a great help on that, as have the people she's worked with on mental health issues. And I just hope that we get over the stigma that is still often attached to people admitting they need help or that they can't understand what's happening to them. I have no doubt now, in retrospect—and many of my friends now can reconstruct conversations or things they saw in Vince in those last weeks, but they didn't know, they didn't understand. And he didn't either feel comfortable or know himself. So maybe out of all of this tragedy and the aftermath, all of the speculation, maybe once we put to rest once and for all the fact that he committed suicide and that it was a tragic loss of one of the best people we've ever known, maybe it can do something to help other people understand what depression can do to you.

Question: Mrs. Clinton, what was your personal reaction when you learned that Jay Stephens would be representing the RTC in a case against Madison?

Answer: My personal reaction?

Question: About the fairness of that decision by the RTC to hire him.

Answer: Well, I didn't understand it. But I don't know Mr. Stephens, and I assume he will be a very fair and judicious lawyer. I guess that's what I would expect.

Question: You're not concerned about his being a Republican appointee and a U.S. Attorney appointed by President Bush?

Answer: Not if he abides by the Code of Professional Ethics and does his job professionally, I'm not, and you all keep an eye on him.

Question: Mrs. Clinton, do you think, with the benefit of hindsight, that it was improper for you and your law firm to represent the Federal Government against a family friend, Dan Lasater, and against accountants for Madison S&L without fully disclosing that you had been business partners with Mr. McDougal?

Answer: Well, Ann, I don't know what was disclosed and what wasn't. Those were not my cases. Those were cases that came to the firm to other lawyers. I've been told that things were disclosed quite extensively. And certainly in Arkansas, most things are known. And the relationship with Mr. McDougal, the fact that Mr. Lasater made campaign contributions to my husband, was certainly well-known. In both of those instances, I don't think I had anything to do at all with the representation against Madison on behalf of the Federal Government. At least I have absolutely no memory of having done anything on that case.

With respect to the Lasater case: I think out of that entire case I worked 2 hours, as a favor to one of the lawyers who was out of town who asked me to review a pleading. And I have specifically inquired whether there was any ethical conflict with respect to that and have been assured there was not. He was not a client that we had any obligation to. Thousands and thousands of people contributed to my husband. That is not considered disqualification. We were not personal friends or social friends. So I don't see any basis for saying that my work for him, as limited—or against him—as limited as it was, amounted to any kind of conflict.

Question: It's not just the press that has questions—sometimes the American citizens who talk to your husband at town meetings and all. And one young woman in Charlotte asked him a question I'd like to pose to you. She said that in the recent news reports about the First Lady's cattle futures earnings, and with all these Whitewater allegations, many of us Americans are having a hard time with your credibility. How can you earn our trust back? Is there a fundamental distrust of the Clintons in America?

Answer: Well I hope not. I mean, that would be something that I would regret very much. I do think that we are transition figures, if you will. We don't fit easily into a lot of our pre-existing categories. And let me speak just about myself. You know, I came to this role having worked my entire life. I mean, I started working in the summers when I was 13. I always worked. I worked through college. I worked through law school. That's what I did. And after I married, I continued to work. And after my daughter was born, with the exception of the 4 months I took off for maternity leave, I worked. Now, I took time off from work to do volunteer work, like I took a long time off from my law firm work to work on education reform, or I would take time off to work on my husband's campaigns, or I would be in Washington on the Children's Defense Fund. I would certainly take a lot of time, but I was fundamentally working.

And I think that having been independent, having made decisions, it's a little difficult for us as a country maybe to make the transition of having a woman like many of the women in this room, sitting in this house. So I think that the standards—and to some extent, the expectations and the demands—have changed. And I'm trying to find my way through it and trying to figure out how best to be true to myself and how to fulfill my responsibilities to my husband and my daughter and the country. So I do think that there is some of that.

And then additionally, as I have said earlier, I think that my fundamental belief in privacy and my feeling that we were being asked things and demands were being placed on us that had never been demanded of prior inhabitants of this house—unprecedented, in Arthur Schlesinger's words—didn't make sense to me. I couldn't quite figure it out, and I resisted that. And I think I resisted it in ways that may have raised more questions than they answered. And I just don't think that was a very useful road for me to go down, and I'm trying now to better understand how to fit my personal needs and my own personal beliefs and what I want to do with this role for the country and the contribution I want to make into a broader context so that I can be as forthcoming and accessible as you need me to be.

Senator MACK. I couldn't help but notice, at the beginning of that both you and I were grinning somewhat. I guess it was because you were referred to as a bright, young attorney?

Mr. MASSEY. Senator, which part were you grinning at, the bright part or the young part?

Senator MACK. Both.

On the videotape we just saw, Mrs. Clinton makes a very clear distinction about what she did and didn't work on. She expressly states that she had no involvement and no memory of working on the questions and issues about whether Madison could go forward with the preferred stock offering.

I believe that you earlier told us in answer to a question by Mr. Chertoff that Mrs. Clinton supervised and asked for updates on Madison's ability to do a preferred stock offering and their ability to have an in-house broker-dealer arrangement; is that correct?

Mr. MASSEY. Senator Mack, the time records reflect some time on her part that I would attribute to billing attorney-type supervision, and I think it would have involved asking me where we were on particular matters on which I was working, and I'm telling her, and sometimes asking for correspondence.

Senator MACK. But that would include both the preparation, if you will, of the letter, the April 30th letter, and then issues related to preferred stock—the preferred stock in broker-dealer?

Mr. MASSEY. I would have to look at her entries to tell you. There may be an entry where she looked at the letter. I'm just not—is that your question, sir?

Senator MACK. I don't think I have a question about whether she looked at the letter. It's a question of whether she did work on the preferred stock or the broker-dealer. And I think your testimony in response to Mr. Chertoff's question was that she did.

Mr. MASSEY. I'll tell you, my impression which is not varied by the timesheets was that these were primarily one-man jobs, and I did primarily all of the research, writing, drafting, and so forth. Mrs. Clinton had a role—obviously she had a role in those matters. I view it as a supervisory role. In terms of who was in the trenches and doing the work, Senator, it was me.

Senator MACK. I am a little curious about the supervisory role. Why Mrs. Clinton? She also said in the tape we all just saw that this is an area she didn't have any expertise in. Why would she have been the backstop? Why wouldn't you have gone to a partner, for example—I guess, was it a securities section in the firm or transaction section, or what did you refer to it as?

Mr. MASSEY. We called it a security section.

Senator MACK. Why didn't you have an attorney in that section of the law firm as being the backstop?

Mr. MASSEY. Well, I am not sure what she meant by "backstop." I would take it to mean we had a policy. Mr. Chertoff was wise in telling me not to put my words in other people's mouths. These are her words. My impression is she means billing attorney because at the time, in 1985 and today, we had a policy that first-year, second-year lawyers couldn't serve as billing attorney, couldn't open their own matter and bill the clients.

Senator MACK. How many partners outside of your section were billing attorneys in other matters that you dealt with?

Mr. MASSEY. It's—over 11 years, it's hard to count, but it occurred, it occurred. Other people would come to me with areas that involved my specialty—

Senator MACK. I'm thinking now specifically in your case when you were an associate. What I'm gathering from your answer is that it was not uncommon for an associate in the transaction section to have litigating partners being billing attorneys on their work?

Mr. MASSEY. Sure, not uncommon.

Senator MACK. I'm curious again about—you have pretty much said to us, from your perspective, you did not bring this account to the firm?

Mr. MASSEY. Sir, what I've tried—and I've testified to this and have told reporters this since this issue came up in 1992, and my position has not changed. I don't have all the facts to make that determination. I think that's what this Committee is here for.

I think it's in the client's—I think it's fundamentally the client's own judgment as to why they came to my firm. And as far as I'm concerned, if the client says they came because of me, they came because of me. If they say they came because we had a pretty building, then they came because we have a pretty building.

Senator MACK. Do associates of law firms make efforts to get accounts?

Mr. MASSEY. I did.

Senator DODD. Absolutely. They better. You are going to be an associate the rest of your life.

Mr. MASSEY. All the associates back home—that's right—to all the associates back home, my answer is yes.

Senator MACK. So I gather from my friends on the Committee who are attorneys that it is something that's expected of associates,

to get business for—and it's probably things, then—it's considered to be important, it does have some reflection on whether you become a partner.

Mr. MASSEY. It is more important as a partner than it is as an associate.

Senator MACK. My question would be do you remember the first account that you got for the firm?

Mr. MASSEY. Where I knew it was mine? Yes, sir. Where it was unquestioned, yes, sir, I do.

Senator MACK. So what you're saying, in your mind, this was not your account?

Mr. MASSEY. I don't recall feeling like this was my—that I killed this deer.

Senator MACK. I have been in the banking business as you-all know, and I know that there's an important aspect to the banking business about trying to get new accounts. I also remember when I was responsible for bringing business into the bank, and so that was why I was curious as to whether it was important and it was something that you would remember. And basically by what you've said, as far as you're concerned, this was not your account?

Mr. MASSEY. I didn't have a big part when they came in. Maybe I should have.

Senator BENNETT. If I might. I know people who take credit and are absolutely sure in their mind for bringing in business that they didn't bring in, so it's refreshing to have somebody as candid as Mr. Massey not try to take that credit.

The CHAIRMAN. Senator Sarbanes.

Senator MACK. If I could—and I would gather, then, though, that your paycheck did not reflect that this was your account?

Mr. MASSEY. Sir, we didn't—we weren't compensated as associates based on whether we brought work in or not. It sort of depended on the will of the partners.

Senator MACK. And if the Chairman will indulge me one moment more.

The CHAIRMAN. Certainly.

Senator MACK. The other thing—I had to leave the room a moment ago so I may have missed the point, but I think there was the issue raised about—and I think your response was something like it was a slam dunk, having to do with this was a straight legal question and there's really no question about whether this could be done or not. And I guess that was all done, and, again, I apologize for not being here at that particular moment.

I guess the question was being raised to show there was no attempt on the part of Mrs. Clinton to influence Ms. Bassett with respect to the letter that would come back to the firm, and here's my point. I really again just draw this on having been in the banking business for a number of years prior to coming here. I must say to you it's been my experience that there never is such a thing as a slam dunk when it comes to dealing with regulators.

Mr. MASSEY. That's a fair point.

Senator MACK. I suspect that's an experience that you've developed over the years, that there isn't. I guess what I'm saying here is I can't help but think as there were discussions in the firm about how to proceed with the issue of getting approval, that there were

questions asked about well, what can we do that can be most effective in getting the kind of answer we want for our client. And so I don't think it is beyond question that there was the possibility that when Mrs. Clinton made that call to Ms. Bassett, it was just kind of a way of saying to someone who, only 4 months prior to that, had been appointed to that position by her husband, oh, by the way, there's something coming down from our law firm that's fairly important to our client.

And that's the reason that I raised that, and again, it is only from the perspective that there never is a slam dunk. There is always a way that regulators are going to raise questions.

Mr. MASSEY. Senator Mack, I have clients back home to whom I have told things have been slam dunks before and had those words back in my face. I'll say that I agree with that. I do believe with respect to the preferred stock matter, it was, as I testified, I believe that it was—granted, there's always discretion, but I believe that it was a pretty easy, easy answer, and I also believe that the broker-dealer matter, the other matter that I worked on for Madison, I would have told you I thought it was a slam dunk, and we had a real hard time with the regulators.

Senator MACK. All right.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

I'm going to take, if I can, just a couple minutes to express some general comments and thoughts. I appreciate the testimony of our witness here who is, as I see it and listened to over the last hour or so and sum it up, that the person in the trenches, to use your own language, on this matter was the witness before us who did a one-man job basically with Mrs. Clinton providing some supervisory role here.

A lot has been made of the 60 hours, as I calculate it, and a rough calculation, billable hours over 15 months by a law firm on an individual basis could be in the neighborhood of 3,200, 3,500 hours, maybe a little less, but roughly in that category. Sixty hours is not exactly what you'd call extravagant at all.

And then, in terms of how the client came into the law firm, it's unclear. As you pointed out, Mr. Massey, that would largely depend on how the client saw the matter. You don't recall specifically bringing it in, but you don't deny that you might have been involved and somehow had some influence on the client's decision to seek out the Rose Law Firm. That's the sum and substance of what I've heard you say here this morning.

Senator SARBANES. You did talk to Latham about it, didn't you?

Mr. MASSEY. I pitched the business to Latham.

Senator SARBANES. Pardon?

Mr. MASSEY. Yes, sir, I did.

Senator SARBANES. You made a pitch to Mr. Latham?

Mr. MASSEY. Yes, sir, I did.

Senator DODD. I didn't hear that earlier. So you did make a pitch to the client?

Mr. MASSEY. Yes, sir.

Senator DODD. Well, Mr. Chairman, I thought with the beginning of the new year here, I would express some general views because so much has happened in the last couple of weeks.

In addition to a real blizzard in town, we have had a blizzard of allegations that have been made back and forth, and I would be less than candid, Mr. Chairman, if I didn't express my deep concern over the direction that the Committee has taken in the last couple of weeks. There's no doubt in my view as we move deeper into the Presidential campaign season, the Committee has become more partisan. The accusations made by some of the Majority and some employed by the Majority have grown consequentially wilder and more vituperative. Unfortunately, the recent pattern seems to be that as soon as the public attention starts to drift from these hearings due to a lack of any new revelations or any new evidence of wrongdoing, reckless charges and accusations have been made in order to generate new headlines.

Never mind that virtually in every instance, in every instance, the facts turn out to prove these accusations false or so overblown that the original allegation bears little resemblance to the truth. Perhaps in normal times we might write this exercise off to politics as usual in this town, but as so many in the Majority are fond of pointing out, these are not normal times.

I think that it says something about the priorities of those who are running Congress today that we have managed to find time to have more than 30 hearings on Whitewater, hundreds of hours, while there's been a grand total of one hearing, one hearing, on the proposed cuts in the Medicare program. While we spent 7 months poring over the minutia of events, 2 to 15 years ago in some instances, we cannot seem to find the time for Congressional hearings to review Medicaid cuts that will affect health insurance for millions of children. Nor do I think I'm alone in finding it just a little distasteful that thus far, we have spent nearly \$30 million, \$30 million, for all the sundry investigations while Congress cannot seem to find the will to fund many vital programs or keep the Government open.

Mr. Chairman, I have tried and I know you have for over 7 months to join together to avoid allowing these hearings to become a political sideshow. But the course that this Committee has taken in the last several weeks leaves no doubt that we have abandoned any attempt at impartial fact-finding and are now fully engaged in the Presidential election battle.

The Majority's recent outlandish allegations and innuendoes about the First Lady in the press are but the latest, and perhaps the most repugnant, of a long series of dry holes that we have dug since July.

First, there was the Helen Dickey phone call which turned out never to have happened. Then there was the mystery phone number that turned out to be a trunk line for the White House to be used when the main number was busy. Then there were allegations last December of the new Vince Foster files which turned out to have been in the possession of the Committee all along. Then there were the allegations that the SBA had interfered with the indictment of David Hale when, in fact, the SBA moved aggressively with its investigation and Hale was indicted in record time.

I have also been dismayed by the Committee's unwillingness to release the results of the so-called Stephens' Report, prepared for the RTC after nearly 2 years at a cost of \$4 million by a prominent Republican, in which the Clintons were exonerated of any civil liability with regard to the failure of Madison.

Last, there was the long-anticipated testimony of Jean Lewis, who was supposedly going to show that she was muzzled by the Clinton Administration. In fact, her testimony showed that she was biased against the President from the start, and that her motivations were questioned as early as 1992 by the Republican U.S. Attorney in Little Rock, the FBI, and more recently, by the Independent Counsel.

Almost a month ago, Mr. Chairman, I requested and obtained unanimous consent to have the Stephens' Report made a part of this Committee's public record. However, I found out this morning that the Committee has been unwilling to release the report to the press. I find it a little odd, to say the least, that the Committee makes much ado about supposed failures of the White House to turn over documents while it refuses to release voluminous documents that strongly buttress the Clintons' statements about Whitewater.

In light of this information vacuum created by the Committee, I will take this opportunity to read some of the reports' conclusions into the record at this time. I quote from the report:

Therefore, on this record, there is no basis to assert that the Clintons knew anything of substance about the McDougals' advances to Whitewater, the source of the funds used to make those advances or the source of the funds used to make payments on bank debt.

On this record, there is no basis to charge the Clintons with any kind of primary liability for fraud or intentional misconduct. This investigation has revealed no evidence to support any such claims. Nor would the record support any claim of secondary or derivative liability for the possible misdeeds of others.

To hold one liable for conspiracy or aiding and abetting, the RTC must plead and prove the elements of these theories. These elements include a general awareness of the wrongful acts being committed by others and an intention to assist in the commission of the primary offense. There is no evidence here that the Clintons had any such knowledge or intent.

And I underscore the point that they made.

Therefore, pending the results of the criminal case, it is recommended that no further resources be expended on the Whitewater part of this investigation.

I would also like to ask, Mr. Chairman, unanimous consent that the Committee make the report available to the press at the conclusion of this hearing. If there are confidentiality concerns, then I would request that the Chairman and the Ranking Member and their Counsels meet with the appropriate officials to develop a process which can allow the report to be made public.

We should pay careful attention to the key phrase of that conclusion: No evidence, no knowledge, no liability. The bottom line of this report points to one thing. No motive. While this report does not necessarily constitute the final word on Whitewater, no one has disavowed its findings which indicate that there's no reason for the Clintons to have covered up, obstructed, misled, delayed, or been anything less than forthright and cooperative.

Without a motive, Mr. Chairman, there's nothing to hold these conspiracy theories together, other than political or personal en-

mity against the President and the First Lady. And this leads me to my last point, and that is the most recent, outrageous accusations made on national television against the First Lady by some of the Majority staff of this Committee.

I commend you, Mr. Chairman, in refusing to engage in name-calling and for maintaining a basic level of respect of the First Family that is due them regardless of political party. And I also commend you, Mr. Chairman, for avoiding on Larry King, Tuesday night that you will—avowing rather that you will continue to operate with the dignity for which you have been rightly praised.

Yet that same night as you were making that avowal on Larry King's show, Majority Counsel appeared on ABC News, and on Nightline, stating, and I quote him, "The First Lady's fingerprints are all over the transaction which bank regulators said was fraud."

Mr. Chairman, the evidence in our possession leads us to no such conclusion, and it is certainly unfair to make any kind of conclusions before we've had a single day of hearings on the subject matter. But perhaps the Majority staff has prejudged this matter without a hearing of a single witness to testify, in which case we should adjourn these hearings now and simply allow the staff to file its report, since they seem to feel there's nothing to learn from any of these further hearings, especially if it is exculpatory.

But if the Majority staff has gone beyond what the Chairman has concluded, and have wrongly represented the views of the Majority Members, then I hope that my colleagues will take this opportunity to correct those staff statements and to set the record straight.

Mr. Chairman, you know that I have the highest respect for you as a colleague and a friend, and I certainly wish that I didn't have to start off the new year on this note. But the Committee's recent history leaves no doubt to this Member that we are no longer impartial Senators serving on a Senate panel, but we have become players in the opening act of the 1996 Presidential campaign. Mr. Chairman, I will yield back my time to Mr. Ben-Veniste if any remains.

The CHAIRMAN. Senator, with regard to the RTC report, we certainly have no objection to asking that that be made part of the record. As it relates to its release, I believe that it has already been widely circulated, and if there is no objection, I will ask that it be released. As it relates to the findings contained in the report, I believe that it is rather clear that it does not exonerate anyone, but only makes some determinations about whether pursuing possible litigation would be cost-effective.

In addition, I would note that various witnesses were not available, and more importantly, that key documents, documents that have just recently come into our possession, were not available to the RTC. As a matter of fact, I believe the report should be put out—

Senator DODD. As you know, Mr. Chairman, there have been requests for the report and we have been told by the Committee that it could not be released.

The CHAIRMAN. I believe at this time, given the wide circulation, whether officially or unofficially, that the entire report should be released.

Senator DODD. You understand my point, Mr. Chairman.

The CHAIRMAN. Certainly I do.

Senator DODD. A lot of accusations get made. Here is a \$4 million report by a Republican law firm out there spending 2 years on it, and all these other accusations get made. Here's a report that says something else they concluded. It doesn't end up in the public domain.

The CHAIRMAN. It does. However, so that we remove that, and people will have to make their own judgments about what the report concludes and the basis for its conclusions, and I would indicate to you that there are reservations. And one of the things that I will ask is that we forward—and I'm certain that they already have the documentation that has recently come into our possession, but we will indicate to the RTC our hope that they would review this matter because the new documents give them additional information that they did not have.

I believe there may be certain legal rights that they may have now that they didn't have at that point in time. I don't want to go further because that could be characterized as unfair to people, but we will ask them to examine whether this new documentation would provide them with the basis to make a recommendation to pursue some course of legal action for recovery.

Let me also indicate that I am not suggesting against the First Family, but I do believe that there is some possibility of liability. I don't want to go further, but I think we should make it part of the record, and we certainly will make it available.

Let's see. Senator Shelby and then Senator Bennett.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, thank you, and I appreciate you continuing with these hearings.

Mr. Massey—

Mr. MASSEY. Good morning.

Senator SHELBY. —how long were you working at the Rose Law Firm before you came in contact with Mrs. Clinton on a work project?

Mr. MASSEY. Sir, I came to the firm for a few months in May 1984.

Senator SHELBY. Was this 1984 when you came to the firm?

Mr. MASSEY. I passed the bar and got on the letterhead in August 1984.

Senator SHELBY. 1984.

Mr. MASSEY. And so the matter—the time records indicate that the first matter was in April 1985, so that would be approximately 8 months.

Senator SHELBY. About how many lawyers were in the law firm at that time in your best judgment?

Mr. MASSEY. Forty, 45.

Senator SHELBY. Forty lawyers more or less?

Mr. MASSEY. Forty-five.

Senator SHELBY. That's partners, associates, and so forth?

Mr. MASSEY. Yes, sir, total lawyers.

Senator SHELBY. What was the first matter that you worked with Mrs. Clinton on?

Mr. MASSEY. I think this was it.

Senator SHELBY. And this being the Madison Savings?

Mr. MASSEY. Yes, sir, I'm sorry. The preferred stock issue with respect to Madison Savings & Loan, I believe was my first one.

Senator SHELBY. How did this come about? Did she ring you, come to your office, or you go to hers?

Mr. MASSEY. Sir, as I've testified earlier, I would like to be more help on the chronology of the events, but I don't recall precisely how that all worked. Whether I got called, whether she called me, whether she came to my office, whether I went to her office, I don't have a recollection.

Senator SHELBY. When you worked with her, did you work under her supervision, so to speak?

Mr. MASSEY. With respect to this, I would say technically, that's correct.

Senator SHELBY. She was a partner, you were a new associate at that time; is that correct?

Mr. MASSEY. Yes, sir.

Senator SHELBY. So in any law firm relationship like that, you have a partner that you are working with. In this case, was it Mrs. Clinton?

Mr. MASSEY. Sir, as the time records indicate, and again, I have no reason to doubt them, Senator Shelby, there were other partners within my section on whom I think I relied for technical advice. As you'll see, I had conferences, and there were experts on statutory interpretation in my section, there were experts on Regulation D, various matters relevant to this issue. Mrs. Clinton was the billing attorney and had a relationship with me such that she needed to know what I was doing so she could be prepared to update the client at any time.

Senator SHELBY. She needed to know at all times what you were doing, did she not? You were a young attorney under her supervision. She was the partner, and as you just said, the billing attorney, the one that billed out the money or the time to get the money back in the firm——

Mr. MASSEY. Sir, I'm fortunate enough to have——

Senator SHELBY. —is that right?

Mr. MASSEY. I would like to give you a bit more thorough answer. I'm fortunate to have clients with whom I have a billing relationship, and I would say a lot of it depends on the matter and the lawyer working on it. Sometimes I'll let a lawyer work, a senior associate very skilled at a particular matter. I frankly don't keep much track of them. Sometimes I'll let him run. Sometimes I keep a pretty tight rein.

Senator SHELBY. During the time you were working on Madison under the supervision of Mrs. Clinton as a senior partner and the billing partner, how many times a week would you talk with her about what you were doing, or what she had you doing for Madison?

Mr. MASSEY. Sir, I would like to give you specific numbers. I think the timesheets or the time in these memoranda shows that I had a number of conversations with her about the Madison matter as I was working on it.

Senator SHELBY. And would you call it a substantial number of times?

Mr. MASSEY. The numbers are the numbers, sir. I mean——

Senator SHELBY. What was your impression of Mrs. Clinton? You were a young associate, she was a partner, well-educated woman. Would you agree to that?

Mr. MASSEY. Yes, sir.

Senator SHELBY. Was she detail oriented?

Mr. MASSEY. Yes, sir.

Senator SHELBY. Was she—you'd say very bright?

Mr. MASSEY. Yes, sir.

Senator SHELBY. A good memory?

Mr. MASSEY. I would expect so.

Senator SHELBY. You would not expect——

Mr. MASSEY. She's a very smart person.

Senator SHELBY. And very detailed?

Mr. MASSEY. I would expect so, yes, sir. I would say I haven't practiced with her enough to give you a definitive answer on that, but I think so.

Senator SHELBY. You worked with her for how long during this time under her supervision?

Mr. MASSEY. Sir, my involvement——

Senator SHELBY. A year or so?

Mr. MASSEY. Less than that. I think my involvement began in April, and I think it tapered off after about December, so it was about 8 months. There was some time afterwards, of course.

Senator SHELBY. If the billing records that you keep referring to as the definitive thing here——

Mr. MASSEY. I have no reason to doubt them. They're better than my memory.

Senator SHELBY. Billing records are basically definitive in any law firm, are they not, as far as you go back and you see what you have done, and what you did for whom?

Mr. MASSEY. Yes, sir, that would be the place I would look.

Senator SHELBY. If the billing records showed that a person did about 60 hours of work over 15 months, including contacts with 68 of a company's executives, other lawyers in the law firm and State regulators, would you call that substantial work?

Mr. MASSEY. Sir, that's a—"substantial" relative to one of our large clients?

Senator SHELBY. Sure.

Mr. MASSEY. Understand, this was never a large client of ours.

Senator SHELBY. This would not be minimal work. It's not something you'd brush aside, is it?

Mr. MASSEY. I would prefer to say that the numbers are the numbers. In my own mind, it's a significant amount of time. Is it substantial or minimal, I don't really——

Senator SHELBY. Thank you. Sure. So if Mrs. Clinton said that she didn't spend any time to speak of on Madison, this would be contrary to the billing records, would it not?

Mr. MASSEY. I'm not aware of all of her statements with respect to her matters——

Senator SHELBY. But if she did say that?

Mr. MASSEY. The records indicate she had some time——

Senator SHELBY. The records speak for themselves, don't they?

Mr. MASSEY. Yes, sir.

Senator SHELBY. The records show, as you have indicated, a substantial amount of work for Madison Savings and billed by Mrs. Clinton; that's the record, isn't it?

Mr. MASSEY. The record shows a number of hours that can be quantified.

Senator SHELBY. Last, you would think—your judgment would be Mrs. Clinton had an excellent memory for detail?

Mr. MASSEY. I would expect so.

Senator SHELBY. Well, you worked with her.

Mr. MASSEY. She's a very, very smart lady; very smart person.

Senator SHELBY. She asked good questions, tough questions, supervised you well?

Mr. MASSEY. Yes, sir. My experience with her is she is a top drawer lawyer.

Senator SHELBY. Very detailed?

Mr. MASSEY. Yes, sir, as are all top drawer lawyers.

Senator SHELBY. And an excellent memory?

Mr. MASSEY. I would expect so.

Senator SHELBY. Thank you.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Don't we go to the other side, Mr. Chairman?

The CHAIRMAN. No, we still have some time.

Senator BENNETT. Thank you, Mr. Chairman.

Mr. Massey, you made an interesting comment which I want to follow up on. When pressed as to why the account came in, you said it is up to the client to say why they hired the firm. And the client, I suppose, here is ultimately Mr. McDougal; is that correct?

Mr. MASSEY. Sir, I am not—I want to go back over a couple of points in my testimony. My contact was with John Latham, and when I asked him for the business, he said McDougal is the guy to decide. So my judgment would be yes, he was ultimately the owner of the institution, and he was the client.

Senator BENNETT. I'd like to read from The Los Angeles Times the first public statement of Mr. McDougal as to why he hired the firm, and I will try to be fair and read the entire relevant portion. Quoting from The Los Angeles Times, the matter first became an issue during last year's Presidential campaign when it was disclosed that Hillary Clinton had represented the savings and loan in an appeal for favorable action by the State Securities Commissioner, an appointee of her husband, the Governor. What had not been previously reported was McDougals' explanation for hiring the Governor's wife. He provided this account in a recent interview with the Times.

Early one morning about 9 years ago, McDougal answered a knock at his office door from a winded and sweating Clinton, out on one of his morning jogs. Clinton was then struggling to retire campaign debts and to make ends meet on his \$35,000-a-year salary. The Governor expressed concern about his family's financial condition and told McDougal that "things were tight," requesting that the savings and loan send some business to Hillary Clinton through her law firm.

"I asked him how much he needed, and Clinton said 'about \$2,000 a month,'" McDougal said. Later that day, the Madison Guaranty owner said, he directed an S&L executive to immediately put Hillary Clinton's Rose Law Firm on retainer for that amount.

"I hired Hillary because Bill came in whimpering they needed help," McDougal told *The Times*. He said he had no specific legal work in mind when he hired Hillary Clinton.

McDougal said he recalled the event vividly because he was so uncomfortable in the meeting—not over the retainer issue, but because throughout that morning conference, Clinton sat sweating in McDougal's new leather desk chair, an expensive gift from his wife.

There is no dispute that Hillary Clinton subsequently went on retainer for Madison Guaranty at \$2,000 a month. But White House Press Secretary Dee Dee Myers said Clinton never sought business for his wife.

"The President had nothing to do with it," Myers said. "He never solicited business for the Rose Law Firm or his wife. This never happened."

So we have a dispute as to whether Mr. McDougal is telling the truth, but Mr. McDougal at least is on record with reporters from *The Los Angeles Times* as saying he made the retainer because Mr. Clinton requested it.

Now, Mr. Massey, as the newspaper report states, there's no dispute that the retainer was paid?

Mr. MASSEY. No, sir.

Senator BENNETT. And the billing records that I have seen and have focused on have said that that portion of the retainer that was charged directly to Mrs. Clinton's billing hours was approximately \$7,200. I've added that up before. We don't need to take the time to add it up again. I think it's still going to add up the same way it has; \$2,000 a month for 15 months comes to \$30,000.

From the billing records I have seen, \$7,200 is the highest figure out of that \$30,000 attributed to any one individual. I added up that which was attributed to you, and it is about \$5,500. The two of you clearly dominate. After that, there are other lawyers who have lower amounts, but the number one amount is \$7,200 out of \$30,000, and not 60 hours out of 3,500 hours, but \$7,200 out of \$30,000, and in your case, \$5,500 out of \$30,000. Between the two of you, you come close to 50 percent of the total billings.

I see you're scrambling around here. Is this—I don't want to try to leave an impression that's not true. I want to establish, is it, in fact, true that roughly 50 percent of the time billed for this retainer was put in by either you or Mrs. Clinton?

Mr. MASSEY. I haven't looked at the numbers so I trust your math, trust it is probably better than mine. The only thing that rung a bell in my mind was the reports we've now received, I think, a total fee of \$21,000.

Senator BENNETT. Of \$21,000—

Mr. MASSEY. Some of the retainer ultimately was returned.

Senator BENNETT. OK. So the \$7,200 for her constitutes a third of the total billed?

Mr. MASSEY. Yes, sir.

Senator BENNETT. The largest amount billed by any attorney. Well, I just have one observation, and I appreciate the Chairman's indulgence.

At the time this deal was made, no one thought Mr. McDougal was a crook. At the time the retainer was accepted, no one thought that this deal was going to go sour or that Mr. McDougal was going to be in the kind of legal trouble he's in. This is a legitimate deal with a legitimate client. The rainmaker presumably is Mrs. Clinton and to me, it's logical that Mrs. Clinton would do most of the work and bill most of the time.

And I have the suspicion, watching the replay of the tape that Senator Mack put up, that some very bright political consultant after the fact recommended that you try to downplay Mrs. Clinton's involvement here and pretend that it wasn't as big as it really was because now we know that McDougal is a crook, and we don't want Mrs. Clinton to look like she had anything to do with him.

If I had been advising the Clintons on the case, I would say at the time the deal was made, it was a legitimate client and a legitimate deal and she did legitimate work for it and she's not about to apologize for it. And I think somebody led her astray and caused her to say statements that are currently now coming back in the kinds of journalistic attack that she's seen.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Massey, in terms of the number of hours put in, you were by far the lead attorney on these Madison matters that you dealt with, not the billing, the number of hours; is that correct?

Mr. MASSEY. Sir, with respect to the broker-dealer and preferred stock issues; as you know, there were six matters in all——

Senator SARBANES. But with respect to the matters on which——

Mr. MASSEY. —but with respect to these two matters, I'm sure that's true.

Senator SARBANES. Of course, you billed at a much lower rate?

Mr. MASSEY. That's right.

Senator SARBANES. You were a first-year; right, first-year or second-year associate?

Mr. MASSEY. First year. I think I was billing at, according to the records, \$65 an hour.

Senator SARBANES. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

Mr. Massey, I don't know if this question has been asked or not, I don't think it has, but as a junior associate, your billing rate was a lot less than Mrs. Clinton's; is that not correct?

Mr. MASSEY. Senator, according to the records, hers was approximately \$120 during this time period and mine was approximately \$65.

Senator MOSELEY-BRAUN. So the dollar numbers wouldn't exactly work out, if you both billed the same amount in dollars, that would represent a lot less work on her part than on yours; is that correct?

Mr. MASSEY. That would be the math, yes, ma'am.

Senator MOSELEY-BRAUN. According to the billing records, on the two matters on which you both worked, the stock offering and the joint partnership, which were the two that you both worked on together among these, according to that, you put in some 75.4 hours, and Mrs. Clinton put in 18.5 hours; is that correct?

Mr. MASSEY. If that's what the records say, ma'am. I'm not looking at them now. That sounds about right.

Senator MOSELEY-BRAUN. So really, on the issues that you both worked on together, you put in four times the number of hours and a great deal more time?

Mr. MASSEY. Yes, ma'am.

Senator MOSELEY-BRAUN. And so, I guess it's kind of difficult to ask you about the analysis of the time records because Mr. Clark,

who actually was involved with these records hasn't been allowed to testify today, and he really is in a better position to analyze the numbers of who did what and when; would you agree with that?

Mr. MASSEY. Can I say something? There was an exchange a minute ago that, just for the record, there was an implication—I don't remember how it came about—that Ron's presence, the managing partner of my firm's presence was somehow improper. And just for the record, I want the Committee to know Ron is here at my request. He and I discussed this. We wanted to make every—we knew that the records had just come out. We knew that they might become an issue, and we wanted to make him available to answer questions that I couldn't answer because we want to help you get to the bottom of all these things. So Ron is here representing the Rose Firm to help answer questions, and that's the only motivation as far as I'm concerned—

Senator MOSELEY-BRAUN. In your mind, he would be helpful to this Committee in its work if he were to testify, at least to answer our questions that you can't answer?

Mr. MASSEY. I'm not saying that—I'm not the Chairman of the Committee and you have your agenda and you want to cover some issues today. I just wanted to say that Ron was here so that we, as the Rose Firm and we are the only two partners here who are partners of the Rose Firm, that we could between the two of us answer any questions you might have. I think we are both still available to do that. Now, if you choose to avail yourself of us or not, that's your choice.

Senator MOSELEY-BRAUN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. I will say that we have had something to do with that process. Two days ago we began to make the request that Mr. Clark be added to the panel. And since Mr. Clark was willing to come to Washington, we thought it would be a good idea and have had an interchange which Senator Moseley-Braun probably is not aware of as between the Minority and the Majority staff on this issue.

Senator MOSELEY-BRAUN. That's good. I just want to ask one final question of Mr. Massey, and it goes to the question of "significant amount of time," what was or was not a significant amount of time, and certainly that is, when you put the word "significant" in, you're talking about a judgment in many instances—

Mr. MASSEY. Yes, ma'am.

Senator MOSELEY-BRAUN. —a value judgment or subjective judgment. But in your own mind, would you say that you put in a more significant amount of time than Mrs. Clinton on this issue?

Mr. MASSEY. Sure, that is what the records show, on these two issues.

Senator MOSELEY-BRAUN. Thank you.

Mr. MASSEY. I have not disputed, Senator—and I think the billing records again are indicative that I did most of the work, and it's my opinion that I did all of the really substantive work or substantially all of it.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Massey.

Mr. BEN-VENISTE. Thank you, Senator.

Mr. Massey, allow me just a moment.

A statement was made about Mr. McDougal not being a crook at the time that the Rose Firm was asked to represent the bank, and I have the highest respect for Senator Bennett, as Senator Bennett knows. Mr. McDougal has been acquitted once, and he is presently under indictment. I think it's probably a better idea not to so refer to individuals in that circumstance, again, with the prejudgment.

Senator BENNETT. I accept the judgment, and I thank Counsel for it.

Mr. BEN-VENISTE. Thank you, sir.

With Judge Hale who had been referred to somewhere as a crooked judge, he had pleaded guilty to two felonies, so perhaps, that description would be appropriate in that case.

But let me get back to the issues of this representation. And we have done some math, \$2,000 a month retainer—and as you mentioned, a portion of that was returned to the bank—divided by 40 or so lawyers at the Rose Law Firm would come to about \$50 per lawyer per month.

You have indicated that, in your view, and I guess Mr. Clark could speak to that more authoritatively, that this was not either a big client or a big matter in the relative scheme of things at the Rose Law Firm back 10 years ago?

Mr. MASSEY. No, sir. They were a relatively minor client.

Mr. BEN-VENISTE. And according to my math, Mrs. Clinton spent about 15 hours or so in connection with the securities matters, and you spent something like 85 hours. Have you done that arithmetic to total up the—

Mr. MASSEY. Sir, I haven't.

Mr. BEN-VENISTE. Well, that's the math that we've done to try to put this into some perspective.

And with respect to the issues of who wrote the letter to Beverly Bassett Schaffer, you indicated that you believe Mrs. Clinton probably reviewed the letter. Is there any question about who wrote the letter?

Mr. MASSEY. No, sir, I believe I wrote it. The first one to seek approval for the preferred stock issue, yes, sir, I wrote that.

Mr. BEN-VENISTE. No question about that; A, it is completely appropriate to have written such a letter—

Mr. MASSEY. I have so testified and represented that to the regulators, I wrote that letter.

Mr. BEN-VENISTE. And B, with respect to Mrs. Clinton's input or supervision, you were a first-year associate. She was the partner in charge of the matter in connection with, liaison with the client as billing partner, completely inappropriate in your view for you to have put her name on the letter?

Mr. MASSEY. I believe I put it on there because she was the billing partner.

Mr. BEN-VENISTE. In addition to the preferred stock and related matter of whether the bank would get a broker-dealer license to be able to engage in these transactions from Mr. Massey, you said that there were other matters or it's been brought to your attention that there were other matters that the Rose Law Firm was handling. Do you know how many different lawyers were handling matters that accumulated this \$21,000 in bills?

Mr. MASSEY. Sir, I could tell you with some time.

Mr. BEN-VENISTE. Who were the lawyers that you can identify?

Mr. MASSEY. Besides myself and Mrs. Clinton? Tom Thrash. It appears that there were entries for Herb Rule. Sir, if you'll bear with me, I can do that.

Mr. BEN-VENISTE. Sure.

Mr. MASSEY. Dave Thomas, Gary Speed, Gary Garrett, Rick Donovan, several paralegals. That looks to be it.

Mr. BEN-VENISTE. Now that's about seven lawyers, and then a bunch of paralegals as well?

Mr. MASSEY. Right.

Mr. BEN-VENISTE. There have been many statements made in recent days outside the walls of this hearing room relating to whether Mrs. Clinton was involved in a transaction known as Castle Grande. Are you in any position to testify about whether the billing records reflect involvement by Mrs. Clinton in the Castle Grande transaction?

Mr. MASSEY. No, sir.

Mr. BEN-VENISTE. And I take it, again, Mr. Clark would be the best person from the firm now to address that issue?

Mr. MASSEY. Sir, I don't know if he would be prepared to testify to those matters either. I just know that I'm——

Mr. BEN-VENISTE. That you're not?

Mr. MASSEY. —that I'm not your man. I'm happy to help, but——

Mr. BEN-VENISTE. With respect to the other matters that were ongoing during the course of this representation, there were two regulatory matters, were there not?

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. One involving the question of whether certain land was considered within a county that had a requirement that no liquor could be sold and a county that would permit the sale of liquor?

Mr. MASSEY. You know more about it than I do, sir. Again, the time entries——

Mr. BEN-VENISTE. And that's an issue that's reflected in the time entries but about which you are not the best Rose Law Firm witness to provide the testimony?

Mr. MASSEY. No, sir.

Mr. BEN-VENISTE. Now with respect to the other regulatory matter that's reflected in Mrs. Clinton's billing, there's something to do with whether this particular property could be considered in some sense a utility for purposes of water and sewer. Are you in any way able to answer our questions relating to the firm's representation on those issues?

Mr. MASSEY. Sir, I have no personal knowledge of that matter.

The CHAIRMAN. Senator Mack.

Senator MACK. Thank you, Mr. Chairman.

Mr. Massey, I would like to focus back on this conversation that Mrs. Clinton had with Beverly Bassett Schaffer. The records show that Mrs. Clinton had that conversation with Ms. Bassett, who was the Arkansas Securities Commissioner, and again a Clinton appointee, and that conversation, as I understand it, took place the day before the additional request for Madison stock offer was sent by the Rose Firm.

Mrs. Clinton's characterization of that conversation, and I am quoting now from an interrogatory response to the RTC when she said, "I may have made one telephone call to the Arkansas Securities Department to find out to whom Mr. Massey should direct any inquiries regarding an S&L matter. I do not remember to whom I spoke."

I think most people today conclude that that conversation took place with Beverly Bassett Schaffer, but beyond that she does not recall any conversations about Madison's financial condition with State regulators. Did Mrs. Clinton tell you to address the letter to Handley?

Mr. MASSEY. I don't believe so. I don't believe so. I don't know.

Senator MACK. I mean the question of who to address the letter to is a pretty straightforward—

Mr. MASSEY. Sir, it's 11 years ago. She could have—

Senator MACK. Let me finish my comment. I wasn't trying to be critical of your response. What I was saying is it's a fairly straightforward question, who specifically should receive a letter. It is a little surprising to me, frankly, that the billing partner would be making that kind of a call. Frankly, if that was happening in my office, I'm sure that probably one of my staff folks would be asking one of the interns to make that kind of a phone call, so it doesn't make a lot of sense to me that that was the purpose of the call. And all I'm trying to lay out here is it seems to me there must have been some other purpose for her making that call. Do you remember anything again with respect to that phone call?

Mr. MASSEY. Sir, I testified earlier, I don't remember being on the call. It's possible, but I don't have a time record that shows that. It's not uncommon to let an agency or regulatory body know that you have an application in the mail. Just sort of a heads-up, let them know that it's coming.

Senator MACK. Let me start specifically with you. Were you concerned at all about Mrs. Clinton calling, making that kind—or making a phone call to the commission, again given—I gather that she had some concerns and I think she maybe voiced those about the impression of the impropriety of making that kind of a call to someone her husband had appointed to that position.

Mr. MASSEY. Again, I'm not sure I was a party to the call, but I don't remember having any concern about it.

Senator MACK. Today you would not have any concern about that?

Mr. MASSEY. I probably, I probably would interpose a lawyer.

Senator MACK. I'm sorry?

Mr. MASSEY. Yes, I probably would. Personally, I would not want the appearance of any—not even for there to be a question about whether or not there was any influence on it.

Senator MACK. I think most people would agree with that.

Mr. MASSEY. I wouldn't consider it a matter of ethics. I just would not want to put the regulator on the spot. I think the reaction the regulator has when you try to use political influence oftentimes is that it backfires on you. I wouldn't want it to backfire. It wouldn't serve the client's interest.

Senator MACK. It seems to me that Mrs. Clinton wouldn't want to subject herself to a question of impropriety based on a phone call strictly to find out who to address the letter to.

Mr. MASSEY. Sir, I wasn't—I wish I could help you. I hear what you're saying.

Senator MACK. Again, back to the question about her name appearing on the letter, is it common that associates would have the billing partner's name on all letters? Give me a sense about whether this was a usual practice, unusual practice. I mean again, just so—there are those of us who are skeptical, again, as to why her name would appear, why she would be making a phone call, all really kind of sending that subliminal message that this is an important issue for me, so I'm trying to get a sense of is it common? Did associates put the billing partner's name on letters that they sent out? And if we went back through records, is that what we would find?

Mr. MASSEY. Well, it's a—the answer to that is, was it common? I would say that with respect to this—now again, I'm testifying as to why I did something 11 years ago, so this was our first matter with this client, and she was the billing attorney. And in my mind, it would be appropriate to show that we have done this, we have taken this first step as an associate. I would have routinely included the billing partner's name on the first letter written on the first engagement for this client, and without regard to who that partner was.

Senator MACK. Do you recall any discussions at that time about whether that itself would be some impropriety?

Mr. MASSEY. No, sir.

Senator MACK. Again, you were fairly strong a minute ago about your feeling that she shouldn't make that call. What is the difference between having made that call and putting her name on that letter? Isn't there some kind of implication there by her name being on the letter, this request to the Commissioner?

Mr. MASSEY. You obviously have one. I mean you take a—

Senator MACK. No, I'm really asking you that. I'm really not trying to be that judgmental.

Mr. MASSEY. I can only tell you what I think I was thinking when I put her name on the letter, which was—

Senator MACK. I understand that, but I'm now trying to ask you again—you gave me a fairly strong opinion about the phone call, that really that was something that shouldn't have been done.

Mr. MASSEY. No, I think I said I would have interposed somebody just to protect everybody's interest.

Senator MACK. All I'm asking you is what is the difference? Why would you have any less concern about the actual letter that goes to the Commissioner appearing to be a letter that's coming from Mrs. Clinton?

Mr. MASSEY. Can't argue. That's a fair point.

Senator MACK. If you had to do it over again, do you think you would not have her name on that letter?

Mr. MASSEY. I wish I had it all to do over again, but maybe not.

Senator MACK. Thank you, Mr. Chairman.

Mr. MASSEY. I'm trying to be candid with you.

Senator MACK. No, I understand that. And I am merely asking for information based on my own lack of knowledge, frankly, so I thank you for your input.

The CHAIRMAN. Let me see in the few minutes that are left if we can't touch on something. We have passed down to Counsel, I think you have it, an RTC, Office of Inspector General, Office of Investigation Report, and this was an interview conducted on July 16, 1995, of John Latham, you have it in front of you, don't you?

Mr. MASSEY. Yes, sir. I see it on the screen.

The CHAIRMAN. OK. Now, Mr. Latham described you met while you were giving instructions. You indicated, and I think this may—would you start with the third paragraph, read with me if you would: "Latham said that at one time, date not recalled, James McDougal suggested that Madison Guaranty use Rose for some of the legal work at the institution." Do you read that?

Mr. MASSEY. Yes, sir.

The CHAIRMAN. It then goes on and says, "Latham said that"—this is Latham saying this—"McDougal had friends over there, he suggested we use them." And then it goes on, "Latham said when asked who the friends were that it was Hillary Rodham Clinton and others." So when we ask you, are you responsible for bringing the business, and you said I don't recall, would this not comport with the fact that really you did not have anything to do with bringing in the business?

Mr. MASSEY. Pretty strong. It's pretty strong.

The CHAIRMAN. Pretty strong that your friend, Mr. Latham, did not go there and say, "Hey, give this business because I have a friend, Mr. Massey," right?

Mr. MASSEY. I have no reason to argue with this.

The CHAIRMAN. Right. This statement is made by Mr. Latham.

Mr. MASSEY. Yes, sir. I've never seen it before, but—

The CHAIRMAN. OK. So this would comport with what you said. You would like to take credit if you bring in business into the company you work for or the law firm, and that's understandable as a young partner. But you had no real recollection of that really being the case, did you?

Mr. MASSEY. No, sir. That's been my testimony.

The CHAIRMAN. If you read on, it says, "Massey said that he also was familiar," let's be fair, "with a Rose attorney."

Mr. MASSEY. Mr. Chairman, I think that should be "Latham said."

The CHAIRMAN. That's right. "Also was familiar with a Rose attorney, Richard Massey, with whom he attended college," and that comports with your memory, "at the University of Central Arkansas. Latham said that he did not specifically recall the manner by which Rose was paid." He didn't even know the manner in which it was paid. He wasn't the guy who brought in the business, "but knew that at some point," so at some point he finds out that the first retainer that he heard about was \$2,000 a month. "Latham said that he did not know who the billing attorney at Rose was."

Senator Sarbanes.

Senator SARBANES. Mr. Massey, I suggest that you go on and read the next paragraph, or let me read it to you. "Latham said that he recalled Rose working on only one matter for Madison

Guaranty. He said that the issue Rose worked on concerned a broker-dealer operation that was purchased by Madison. He said that he recalled that Rose worked either on the acquisition of the broker-dealer operation, or on legal aspects of the acquisition after it had been done. Latham said that Massey worked on the matter because he had specifically asked for him to do so. Latham could not recall any specifics of what the services performed by Rose in the matter were, except that he did recall one occasion when he and Massey met with Beverly Bassett of the Arkansas Securities Department." And so apparently your friend Mr. Latham did ask that you work on the particular matter.

The CHAIRMAN. If I might ask you to suspend, and hold the clock. I say to my colleague, and I beg your indulgence too, in terms of who got the work, given the statements in the quotes by Mr. McDougal, given the statements which Senator Bennett alluded to, given the statements by Mr. Latham who indicated how this business came and how he was told about it, it is quite clear, and that's the point this Senator wanted to make, that Mr. Massey was not the person who originated this business.

Mr. Latham wasn't even aware of the retainer agreement, which further supports this. It comports with the memory of Mr. Massey, who says well, I don't recall being responsible for bringing in the business. And I think with some clarity, we have a duty to determine who was responsible for bringing this business in.

Now as it relates to what junior associate handled day-to-day matter and under whose supervision, we'll look to the records and we take Mr. Massey's testimony, but I was not contesting the fact that Mr. Massey did substantial work, as well as what the record indicates with respect to other attorneys. I thank my colleague for giving me the opportunity to make that observation, and I would ask that we put the clock back and give you whatever additional time you want.

Senator SARBANES. Mr. Chairman, the observation is important because no one has contested that Mr. Massey is the one who did all the work. It's important because Latham said Massey worked on the matter because he had specifically asked for him to do so.

The CHAIRMAN. I don't think that there's any—

Senator SARBANES. You had Mr. Massey there at the table thinking that his friend Mr. Latham didn't respond to his plea to get some work, and here we see clearly in the next paragraph that Latham did exactly that, according to this statement, at least.

The CHAIRMAN. Well, it certainly doesn't go to the issue of who brought in the work, and clearly given at least two of the statements, one made by Mr. McDougal, the other by Mr. Latham taken by a Federal investigator, it's quite clear that Mr. Massey was not the source of, or the origin of the Rose Law Firm being retained.

Senator SARBANES. Senator Simon? I don't think that is clear, Mr. Chairman, but we—

Senator SIMON. Mr. Chairman, first of all, we are talking about what happened 11 years ago, and Mr. Massey, and I don't say this disrespectfully, in his responses to Mr. Chertoff used over and over and over again the words, "I don't recall." We spend an inordinate amount of time here asking people for details of what happened 11

years ago or phone calls made 2½ years ago, and "I don't recall" is an answer legitimately given by people over and over again.

And I think the point made by Senator Dodd about how much time we're spending on this, the almost \$30 million, is worthy of repeating. He mentioned that we've had one hearing on Medicare this session. I asked my staff to find out how many hearings we had on health care in the Congress 2 years ago. We're approaching as many hearings on this as we had on the fact that 41 million Americans don't have health care.

You know, we have to at some point get some sense of priority in this business. We are not U.S. Attorneys, we haven't been appointed the Special Counsel. At some point we have to say what really is our business in responding to the wishes of the people and the needs of the people of our country. What are our needs here and what should we be doing? I think we've lost some sense of perspective.

I would also like to enter into the record, Mr. Chairman, a letter that came to me, and I assume came to all Members of the Committee. It is a letter from David Kendall, the attorney for Mrs. Clinton. Let me just read the first paragraph:

An article in yesterday's Washington Post suggests that the recently discovered Rose Law Firm billing records "may contradict" Mrs. Clinton's sworn statements to the RTC. This innuendo is wholly false. Mrs. Clinton has accurately described her limited work on the law firm's representation of Madison Guaranty, and the billing records confirm her previous statements about that work.

And then the letter goes into substantial detail. I will not read the detail.

Much of the question, Mr. Massey, here is regarding preferred stock that might be issued by the savings and loan.

Mr. MASSEY. Yes, sir, that's correct.

Senator SIMON. So that we get some sense of perspective again, at this point savings and loans nationally were in some trouble; is that correct?

Mr. MASSEY. Yes, sir, that would be my understanding of the background.

Senator SIMON. Isn't it true that the Federal Government, in order to protect the taxpayers, was encouraging savings and loans to build up their equity so that there would be less risk for the taxpayers of the country?

Mr. MASSEY. Absolutely.

Senator SIMON. So we are not talking about some kind of sleazy deal that was unethical that might hurt the taxpayers of the country; is that correct?

Mr. MASSEY. Absolutely, yes, sir. Had we been successful in raising \$3 million or \$5 million for the institution, I can't project they wouldn't have failed, but I expect that you could sure argue that or you could argue that the losses of the taxpayers would have been reduced.

Senator SIMON. And I thank you for that answer.

Now in an interview with you on October 4, 1994, the Office of Inspector General of the FDIC states: "Massey recalled attending one meeting with the ASD," that's the Arkansas Securities Department, "concerning the preferred stock or broker-dealer issue. John Latham and Charles Handley attended the meeting but he does not

believe Hillary Clinton was at the meeting." Why wasn't Hillary Clinton at the meeting, do you recall?

Mr. MASSEY. No, sir.

Senator SIMON. But could it have been that she felt that might be going beyond the bounds of what she should be doing as the wife of the Governor?

Mr. MASSEY. You would have to ask her why she didn't attend but certainly that would be a possibility.

Senator SIMON. Yes, in this whole operation, and you spent more time on this than any other member of the firm, did she do anything at any point that at that time you felt was unethical?

Mr. MASSEY. No, sir.

Senator SIMON. And then in regard to the questions about the billing attorney that have been raised here several times, the person who can answer those questions is Mr. Clark; is that correct?

Mr. MASSEY. He would have more knowledge than I do, sir.

Senator SIMON. All right. I thank you, Mr. Massey. And thank you, Senator Sarbanes and Mr. Chairman. I yield the balance of my time to Mr. Ben-Veniste.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Senator SARBANES. Mr. Chairman, I ask that these interviews of Mr. Massey we discussed be entered in the record.

The CHAIRMAN. So ordered and we'll have—

Senator SARBANES. There are two of them as I understand it.

The CHAIRMAN. We'll have Mr. Latham's interview also entered into the record at the same time.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

With respect to the billing records as regards Mrs. Clinton's telephone conversation with Mrs. Bassett Schaffer, I would like you to turn your attention to the billing records that reflect April 29, 1985.

Mr. MASSEY. That's DKSX 028934?

Mr. BEN-VENISTE. 43. It's in the printout.

Mr. MASSEY. Excuse me. OK. Yes, sir, I'm there.

Mr. BEN-VENISTE. So that's 43. Are you with me?

Mr. MASSEY. Yes, sir, I'm with you.

Mr. BEN-VENISTE. There have been statements made outside the walls of this hearing room that suggest that Mrs. Clinton spoke for 1 hour on the telephone with Mrs. Bassett Schaffer. If you will look at the billing record for that telephone conversation, are you able to say how much time Mrs. Clinton spent on the telephone with Mrs. Bassett Schaffer?

Mr. MASSEY. There really are two entries there, sir. There is the conference with Ms. Bassett and then there is a conference with me, and I couldn't tell you today how you would allocate that 1 hour of time.

Mr. BEN-VENISTE. So there are two things that comprise an hour, and on the basis of looking, unless you have a recollection of how much time you actually spent with Mrs. Clinton that day discussing this matter, the total amount of time on that matter spent by

Mrs. Clinton that day would be an hour, including the time she spent on the phone with Mrs. Bassett Schaffer; correct?

Mr. MASSEY. I don't have a recollection of how much time I spent with her that day.

Mr. BEN-VENISTE. It's 11 years ago, and we understand that that would be very unusual for you to have such a detailed recollection, but we have Mrs. Schaffer's—Bassett Schaffer's statements with respect to that telephone conversation, and if I may be permitted to, I would read from page 8 of the transcript of a CNN interview given by Mrs. Bassett Schaffer, and I would hope that this Committee would deem it advisable to take her deposition and to call her before the Committee so that we may have her recollections. She said was there any—in response to the question:

Question: Was there ever any direct contact by Hillary Clinton with your office?

Answer: She made one telephone call early in the process, probably sometime after we had received their letter but before I wrote my letter to the Rose Law Firm. And it was perfunctory, very brief, nonsubstantive conversation, basically consisting of "we've sent something out there, we have a letter, who should we work with."

That was Mrs. Bassett Schaffer's response.

And similarly with respect to the statement with respect to the appropriateness of raising funds for the bank through a stock offering, Mrs. Bassett Schaffer was asked this question, also at page 8:

Question: Whitewater allegation number two, that Beverly Bassett Schaffer as Arkansas' top banking regulator approved what news reports have repeatedly described as "novel" financing to help Madison Guaranty, a proposal by Hillary Clinton's Rose Law Firm to sell preferred stock?

Answer: Selling stock to raise capital is done every day. I can't imagine suggesting that it's a novel proposal to issue stock to raise capital. In fact——

By the questioner, Mr. Camp:

Question: In fact, documents show Federal regulators knew about the stock sale proposal and hoped it would save Madison from collapsing.

Answer: It wasn't unusual at all. I mean, in the national network of thrifts, you would find a lot of stock savings and loans——

And it goes on.

Does that comport with your understanding of the appropriateness of the transaction?

Mr. MASSEY. I have testified, sir, earlier that it is my impression that has sort of been refreshed by going through the time records that I think the Federal regulators even recommended that the S&L issue preferred stock. It was clearly the cash—cash capital is the best capital for a thrift.

Mr. BEN-VENISTE. Let me ask one final question if I may with respect to the issue of which came first, the chicken or the egg, in connection with the Rose Firm's representation of Madison. You had your conversations with Mr. Latham as you've described, and you pitched the Rose Law Firm to Mr. Latham as being an appropriate firm to handle the securities business that you were providing advice on.

Mr. MASSEY. Yes, sir.

Mr. BEN-VENISTE. Now prior to the time that you did that, had you heard anything about the Rose Firm being retained by the Madison Bank in connection with these matters?

Mr. MASSEY. No, sir.

Mr. BEN-VENISTE. And so the very first billing record reflecting anything done for the Madison Bank appears to be a meeting be-

tween Mr. McDougal, yourself, and Mrs. Clinton. Do you remember that?

Mr. MASSEY. No, sir, at this—the time records show a meeting with—a conference. Now that could have been a telephone conference, with McDougal and Latham, and then if you will see, my entry on the same day—just want to focus on the records because I'll tell you, they're better than my memory. It says, "Research on preferred stock offering, conference with John Latham, conference with Hillary Rodham Clinton."

Now, I didn't have a conference or meeting. As I have testified and have consistently testified for 4 years, I don't think I have ever met Jim McDougal, so there was a meeting apparently that involved Mr. McDougal, according to the time records—I'm not personally aware of it—that I didn't attend.

Mr. BEN-VENISTE. And presumably that was when the firm was retained. The very next item has to do with your work on the securities matter.

Mr. MASSEY. That appears to be the sequence.

Mr. BEN-VENISTE. So there was no lapse of time whatsoever between any initial or seminal event relating to the retention of the law firm and your direct involvement in the matter?

Mr. MASSEY. There's no lapse of a day of time. Now, leave it to speculate as to what time of day, but—

Mr. BEN-VENISTE. What time of day 11 years ago something happened, yeah, I agree with that.

The CHAIRMAN. Well, before I give it to Mr. Chertoff, let's go over something quite clearly, because we all can do this at times.

You never met Jim McDougal?

Mr. MASSEY. Never met Jim McDougal.

The CHAIRMAN. You have no reason to believe what Mr. Latham said in his affidavit or in his statement that he gave to the investigators, that Mr. McDougal said there are friends over there and wants to give them business?

Mr. MASSEY. I believe John Latham is an honest guy, and if he said it, that's probably true.

The CHAIRMAN. And then he went on to say Mr. McDougal said it's Hillary Rodham Clinton.

Mr. MASSEY. I have no reason to dispute that, Mr. Chairman.

The CHAIRMAN. There was a conference, but you didn't attend that initial conference with respect to Latham and McDougal?

Mr. MASSEY. Sir, if there was a meeting, I didn't attend it.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

This issue about the stock, by the way, this was the first application for permission to do this in Arkansas?

Mr. MASSEY. I am not aware of that. I think we had not found that a State-chartered S&L had ever been authorized to issue preferred stock. Now, I am not prepared to say that one had never been done, had been authorized.

Mr. CHERTOFF. At the time you started work at the firm up until and through April 1985, you were aware that Mrs. Clinton and Mr. McDougal did know each other?

Mr. MASSEY. I had—I believe—it's difficult but I believe I had—they knew each other.

Mr. CHERTOFF. Did you know they had a business relationship?

Mr. MASSEY. No.

Mr. CHERTOFF. Did you know that they had a joint investment in something called Whitewater?

Mr. MASSEY. No.

Mr. CHERTOFF. To your knowledge, did anyone at the firm during that period of time, 1984 and 1985, know that Mrs. Clinton had a business relationship with Jim McDougal involving Whitewater?

Mr. MASSEY. I'm not aware that anybody knew.

Mr. CHERTOFF. Can you tell us when was the first time to your knowledge someone at the firm learned about that relationship?

Mr. MASSEY. I can only speak to my knowledge, Mr. Chertoff. Again, we are a lot of lawyers and we all have our separate dealings, and I wasn't particularly situated to know what her investments might or might not have been, and there were some who were closer to her than I was. With respect to me, I learned about it during the 1992 Presidential election, in the newspapers, as most of you did.

Mr. CHERTOFF. Did Mrs. Clinton ever say to you that in connection with her discussions with you about your work on this assignment, that she had a separate and distinct financial relationship with Mr. McDougal?

Mr. MASSEY. I don't believe so.

Mr. CHERTOFF. So she never discussed or disclosed to you the existence of that separate investment relationship?

Mr. MASSEY. No, sir, I don't believe so.

Mr. CHERTOFF. Now the records indicate for April, the one we have just been looking at, that the first activity with respect to this matter, Madison, is a conference between Mr. McDougal and Mr. Latham and Mrs. Clinton; correct?

Mr. MASSEY. Yes, sir, that's her first entry and that's—that's the first entry on the page.

Mr. CHERTOFF. You are not part of that.

Mr. MASSEY. I never met Jim McDougal.

Mr. CHERTOFF. You then come in later when Mrs. Clinton has a conference with you. That's the second thing that happens?

Mr. MASSEY. Yes, sir, that's what it appears to be.

Mr. CHERTOFF. And again so we don't obscure this point, we had both on the television monitor and in the statement that I read to you at the very beginning of this examination a description by Mrs. Clinton of what she contended happened here, that you went to her with a proposal to do work with John Latham at the bank on this issue involving preferred stock, that you went to her and said we're having a problem with the billing, I understand there's a problem with the billing, can you go and work it out so that we can take on this client, and it is your testimony that that is not what happened to your knowledge?

Mr. MASSEY. Sir, so that my answer is not obscured, I would like to say two things. One, what you just said, that is not my recollection. I do not remember, as you said earlier, a proposal in hand to her and discussing with her that there were partners in the firm that were dissatisfied with McDougal and here is a proposal and let's work it out. I have no recollection of that.

It's possible that I had a conversation with her about gee, I think we might be able to get these folks' work, you know McDougal, maybe you could go talk to him.

Mr. CHERTOFF. But you never came to her with any kind of agreement or proposal or deal with Latham to go ahead and do some work?

Mr. MASSEY. I don't remember that, no, sir.

Mr. CHERTOFF. You did not originate this client?

Senator DODD. He doesn't recall that, I think is the answer.

Mr. CHERTOFF. I think he's gone further than that, most respectfully. You did not originate this client; correct?

Mr. MASSEY. Tell me what "originate" means and I will answer the question.

Mr. CHERTOFF. You did not come to Mrs. Clinton and say John Latham has said he wants to hire us, we are going to be retained but we have a problem with respect to the billing?

Mr. MASSEY. That I can speak to. That I will say I don't have any recollection of that. I don't believe it happened that way.

Mr. CHERTOFF. And in fact you know that Mr. Latham didn't have the authority to make such a deal with you?

Mr. MASSEY. That's why my recollection is different.

Mr. CHERTOFF. In fact, your recollection is completely consistent with Mr. Latham's statement which he made to the investigators that it was Mr. McDougal who made the decision to have the matter referred because of his friendship with Mrs. Clinton?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. Now the issue has also come up—by the way, you don't know anything about how the Rose Law Firm was retained to work on the IDC matter; correct?

Mr. MASSEY. No.

Mr. CHERTOFF. Obviously from reviewing the bills you know that at some point after you began your work, there was a separate matter involving this land transaction for the bank called IDC.

Mr. MASSEY. There were four matters that followed my involvement.

Mr. CHERTOFF. Are you also aware that part of this IDC property was a portion of property eventually called Castle Grande?

Mr. MASSEY. That's what I read in the papers. That's my best knowledge.

Mr. CHERTOFF. But you didn't work on that?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. Let's discuss the issue of what exactly was the work done by Mrs. Clinton on this matter that you worked on, which was the preferred stock.

Mr. MASSEY. OK. I can help you there.

Mr. CHERTOFF. According to the piece we saw on the television screen, that portion from the press conference, Mrs. Clinton indicated that this was not an area that she practiced in. Is that consistent with your recollection?

Mr. MASSEY. Yes.

Mr. CHERTOFF. She says, "The young attorney, the young bank officer, did all the work." Did she do some work on this?

Mr. MASSEY. Yes.

Mr. CHERTOFF. She then goes on to say, she makes a distinction between some earlier work in general about whether it's permissible to have this kind of stock offering, and then she says, "The question moved on to the second phase in which I had no involvement that I have any memory of or anyone that I have talked with that was trying to determine whether Madison could go forward, specifically Madison." In fact, Mrs. Clinton was involved specifically with you in doing legal work on whether Madison in particular could go forward; isn't that correct?

Mr. MASSEY. Sir, I would almost prefer to look at the records. I think your characterization is correct. I am not prepared to talk about the——

Mr. CHERTOFF. I'll help you out a little bit. DKS 28943.

Mr. MASSEY. Thank you.

Mr. CHERTOFF. That's the printout for the first week of work on this, which is the week right before the application goes in. It indicates, very first day, there's 2 hours of work Mrs. Clinton bills on this matter.

Mr. MASSEY. Excuse me, 28943?

Mr. CHERTOFF. DKS 28943.

Mr. MASSEY. I see that's a stock offering.

Mr. CHERTOFF. Right, that stock offering.

Mr. MASSEY. Now that I believe is relative to the preferred stock, not the broker-dealer matter.

Mr. CHERTOFF. Correct.

Mr. MASSEY. I'm sorry, I misunderstood you.

Mr. CHERTOFF. That's what she indicated. She indicated as to the issue about whether Madison could go forward with issuing the preferred stock, she indicated she had, "No involvement in it." So let's look at the record on the issuing of the preferred stock. The first day she spent 2 hours on that; is that correct?

Mr. MASSEY. According to the records, yes, sir.

Mr. CHERTOFF. Now then we go down here, there's an entry for April 25, 1985, half an hour, "Review of subscription agreement; conference with R. Massey." What was the subscription agreement?

Mr. MASSEY. We were looking ahead to—after receipt of approval which we expected, as I have testified, we were looking ahead to the actual marketing of the preferred stock and the document whereby an investor would purchase the preferred would be a subscription agreement.

Mr. CHERTOFF. You gave that to her to review?

Mr. MASSEY. Apparently so, yes, sir.

Mr. CHERTOFF. And she reviewed it?

Mr. MASSEY. That's what she says.

Mr. CHERTOFF. By the way, these time records, these are records which are submitted, they are the backup for the bills that are submitted to this client; right?

Mr. MASSEY. That's correct.

Mr. CHERTOFF. And a lawyer has an ethical obligation to be accurate in those records?

Mr. MASSEY. Absolutely.

Mr. CHERTOFF. In fact, as I'm sure you're aware, there can even be a legal obligation to be accurate in the records?

Mr. MASSEY. Yes, sir, I'm aware of that.

Mr. CHERTOFF. So I won't push that any further.

Mr. MASSEY. Thank you.

Mr. CHERTOFF. Let me go down now to the bottom where it says, "Telephone conference with B. Bassett, Securities Commissioner." Again, that is a matter that Mrs. Clinton chose to list on her time records as work done on behalf of Madison; is that correct?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. She also listed a telephone call with you, and that's for a total of an hour; is that correct?

Mr. MASSEY. Actually there's—yeah, as I said earlier, I can't allocate the hour. There was a call with me, there was a call with Ms. Bassett.

Mr. CHERTOFF. Again we're still trying to compare these records which were made contemporaneously under an obligation, a legal obligation to be accurate, with the statement that we saw on television that Mrs. Clinton had no involvement in the effort to determine whether Madison could go forward with the preferred stock.

Let me turn your attention now to——

Mr. MASSEY. Sir, again, your quote was they did all the work versus there was no involvement.

Mr. CHERTOFF. Actually there were two quotes. Quote number one is, "The young bank officer did all the work," or, "The young attorney, the young bank officer did all the work." Quote number two, "Then the question moved on to the second phase in which I had no involvement that I had any memory of or anyone that I had talked with that was trying to determine whether Madison could go forward." I'm comparing that against what the records are here.

Now let me turn your attention to DKSX 28960. It's another printout.

Mr. MASSEY. I'm there, sir.

Mr. CHERTOFF. This is still stock offering; right?

Mr. MASSEY. That's the matter, yes, sir.

Mr. CHERTOFF. And then it says under June 17, 1985, for half an hour—or rather three-tenths, that's what, 18 minutes?

Mr. MASSEY. Three-tenths of an hour, yes, sir.

Mr. CHERTOFF. It says, "Review of application amendments." What were the application amendments?

Mr. MASSEY. Presumably that would relate to the broker-dealer application, although again, I worked on two matters. We were—during this period of time we were amending our—or modifying our application in response to comments from the Arkansas Securities Department, so I would expect that that's what this relates to.

Mr. CHERTOFF. Again that application was specifically on behalf of Madison to get an approval from the Arkansas Securities Department; correct?

Mr. MASSEY. To operate a broker-dealer, yes, sir.

Mr. CHERTOFF. And what these records indicate is that you submitted the application amendments for Mrs. Clinton for her review and that she reviewed them; right?

Mr. MASSEY. Yes.

Mr. CHERTOFF. The reason you submitted documents like the subscription agreement and the application amendments to Mrs. Clinton was because you needed to have a partner look at this work; isn't that correct?

Mr. MASSEY. Sir, I am frankly unwilling to testify as to what reasoning I had 11 years ago, and the reason I say that is there are references here and throughout these billing records where I worked technically with partners within my section, so I might have asked her to look at it. She may have asked me to look at it, for all I know.

Mr. CHERTOFF. Fair enough. You don't know whether she asked you to look at it or you asked her to look at it. What is clear is you submitted it to her and she reviewed it?

Mr. MASSEY. She was a good lawyer, and another pair of eyes over a document was a help to me.

Mr. CHERTOFF. Absolutely. And she was careful; correct?

Mr. MASSEY. Yes.

Mr. CHERTOFF. And she reviewed it; right?

Mr. MASSEY. Yes, sir. Can't argue with the records.

Mr. CHERTOFF. She didn't just stick it in a file; right?

Mr. MASSEY. That's what it looks like, yes, sir.

Mr. CHERTOFF. Because she represented in her records and bill that she had reviewed it.

Mr. MASSEY. That she had reviewed them.

Mr. CHERTOFF. I know my time is up, but there's a statement here again in the press conference when Mrs. Clinton is talking about how the young attorney did all the work, how she had no involvement in this. She says here, "The question moved on to the second phase in which I had no involvement that I have any memory of or anyone that I have talked with," and this was of course—this press conference, this wasn't one of these situations where the press catches you on the way to the airplane. This was a prepared press conference, so the question arises, since you were obviously the person who had worked on this, putting aside the fact that the billing records were not around, you had your own memory of your interaction with her, did Mrs. Clinton or anyone on her behalf come to you at any point in time and say Rick, Mrs. Clinton is trying to remember what happened with respect to her work on this project. Can you help us, can you talk with her or talk to someone else and give her the benefit of your memory?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. I think my time is up.

The CHAIRMAN. Senator Sarbanes.

Mr. Ben-Veniste.

Senator DODD. Well, just briefly if I can. Mr. Chairman, this is almost mind-numbing to go through this. I mean you were talking about events in 1985, now 10 years ago, and people trying to recall statements they made. With all due respect, it is perplexing to me to see us kind of literally splitting the hairs on something here.

Let me just go back and review if I can, Mr. Massey, with you, and I see you're in conversation there, but we witnessed here this press conference in April 1994. Now there Mrs. Clinton says, and I'm quoting here now, "The young attorney, young bank officer, did all the work, and the letter was sent because I was what you call the billing partner. In other words, I had to send the bill to get the payment made. My name was put on the bottom of the letter. It was not an area that I practiced in. It was not an area that I really know anything to speak of about." Now that's April.

In September 1994, in response to the FDIC question limited to the Madison work performed by Mrs. Clinton before the Arkansas Securities Department, "While I was the billing partner on this matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at Rose, and whose specialty was securities law. I was not involved in the day-to-day work on the project." In response to the RTC, Mrs. Clinton says, "During the early part of Massey's work he kept me generally advised of what he was doing and may have sent me drafts of the documents he was preparing."

My point is if you take the press conference, the response to the RTC, the response to the FDIC, we are getting down to nuances here, Mr. Chairman, truly we are. I mean I realize put the press conference on here is the most—the statement is well, they did all the work. Then you have the RTC and FDIC, and it's the bulk of the work. I mean I find the Committee dwelling on this particular aspect here for some nuance that somehow is going to say gotcha, caught you in a terrible lie here.

I don't see that. I see someone trying to respond to events that occurred 9 or 10 or 11 years ago involving 15 hours of work, about 2 days worth of work on a minor client in this law firm to be really stretching.

Now, Mr. Massey, is there anything in the April statement, the statement to the FDIC and the RTC, that Mrs. Clinton has made, that you would fundamentally disagree with here, basically as you read those statements, sort of describing pretty much the situation?

Mr. MASSEY. Sir, I am happy to answer that, but that's a broad question, and I haven't read all of those. And so—

Senator DODD. I'll have you look at them here because those are the three that we have. The Majority is focusing on the press conference, and I understand why they want to do that, but also you have to look at the RTC statements and FDIC statements made basically in the same year within months of each other.

Mr. MASSEY. I have never seen those. I am happy to help but that's—

Senator DODD. Let me ask, Counsel, put those—

Mr. BEN-VENISTE. Let me ask you this question, Mr. Massey, if I may. It's fair to say, and I believe you've testified earlier this morning, that the securities and related matters that you worked on, sir—is it fair to say that the securities matters that you worked on relating to the Madison Bank were essentially a one-lawyer operation?

Mr. MASSEY. I've testified to that.

Mr. BEN-VENISTE. And by saying that they were essentially a one-lawyer operation, is it not a fair conclusion for us to draw as a Committee that basically you did all the work with respect to those matters?

Mr. MASSEY. "All the work" is a term that your Committee is obviously arguing.

Mr. BEN-VENISTE. If we say literally all the work we know it's not true because—

Mr. MASSEY. Literally all the work is not true. All the substantive work, all the research.

Mr. BEN-VENISTE. If you say essentially all of the work, that would be truer, would it not?

Mr. MASSEY. I don't have recollection of anybody working on these matters of any substance other than myself.

Mr. BEN-VENISTE. Now here we have gone again right to the capillary. Three-tenth hours were spent on June 17, 1985, with regard to a review of application amendments by Mrs. Clinton. Do you even recall what it was that you showed Mrs. Clinton on that day?

Mr. MASSEY. No. No, sir.

Mr. BEN-VENISTE. Do you know whether Mrs. Clinton gave you the work back and said Mr. Massey, I have a problem with the work you've done, go back and do it over and do it better?

Mr. MASSEY. No, sir.

Mr. BEN-VENISTE. Was there any sort of substantive direction that Mrs. Clinton gave to you in her capacity as billing attorney and generally overseeing the work that you did that leads you as you sit here now to suggest that on this wholly appropriate representation, that she pulled some substantive or in connection with the work done for Madison.

Mr. MASSEY. Sir, the records are better than my memory. She said she reviewed applications. I don't know what that means. She may have read them, may have read them for comments, may have provided comments. I don't have a recollection of—

Mr. BEN-VENISTE. Nothing stands out in your mind—

Mr. MASSEY. No, sir.

Mr. BEN-VENISTE. —in terms of any substantive direction or work performed by Mrs. Clinton on these matters?

Mr. MASSEY. Well, that's—

Mr. BEN-VENISTE. In terms of your recollection.

Mr. MASSEY. Well, I have now gone through the timesheets, so I'm not prepared to generally characterize something that might be contradicting the timesheets. They speak for themselves. I have no reason to doubt them.

Mr. BEN-VENISTE. Right. So in terms of your own recollection and her review of the matters, and it's obviously important at Weil, Gotshal, at my law firm, partners will review work done by associates that goes out the door. That's the way you do it in a topflight firm where you are responsible. I'm not taking issue with that. And I'm not taking issue with the literal suggestion that clearly you did not do all of the work. We know that's not correct. But in terms of the substantive drafting, the legal research, the material that was presented for ultimate review, that was done by you?

Mr. MASSEY. Yes, I consulted with other lawyers within my section on technical matters, but with respect to the substance of the work, I did it.

Mr. BEN-VENISTE. Now in terms of this great issue of who gets credit for bringing in the work, it is a matter of coincidence, is it not, that just at the time you are pitching the executive at Madison who has asked you for all of this gratuitous legal advice, that the client comes in the door and asks the Rose Law Firm to provide advice on just the very issues that you have been talking to Mr. Latham about? Isn't that so?

Mr. MASSEY. Sir, you said that my pitch came at the time we got the work.

Mr. BEN-VENISTE. You pitched it before you got the work.

Mr. MASSEY. I pitched it before. How much before, I don't know, but there was some time.

Mr. BEN-VENISTE. Is it a matter of months or a matter of weeks or days?

Mr. MASSEY. It was sometime in the—sometime in the first quarter of 1985.

Mr. BEN-VENISTE. OK. So you are with Mr. Latham, you are his instructor, professor at law school in this securities course, you are asked by Mr. Latham what do you think about this, what do you think about that, you provide him the advice, and at the same time you are saying to him, you know, you really ought to come to the Rose Law Firm where we can provide you legal advice and we can do this stuff for you; correct?

Mr. MASSEY. Sure, yes, sir.

Mr. BEN-VENISTE. And then at some point, coincidentally, the Rose Law Firm is asked by Madison Bank to perform exactly the kind of legal work on the legal matters that you and Mr. Latham have been discussing; isn't that so?

Mr. MASSEY. Yes, sir. Coincidentally, I don't think the work came to us coincidentally.

Mr. BEN-VENISTE. I don't think so either, on the basis of the circumstances that you have described. There was a need for representation, you made your pitch, you may have had a conversation with Mrs. Clinton as you have testified wherein you said look, they are looking for representation on these securities issues, I have talked to this fella, maybe we can bring the client in the door. You may have had such a conversation; correct?

Mr. MASSEY. Yes.

Mr. BEN-VENISTE. Then the client appears, and you are immediately plugged in to providing the service you've discussed with Mr. Latham? Is that a fair capsulization of what occurred 11 years ago?

Mr. MASSEY. I pitched the business, I was told that it wasn't up to him. Sometime later, months or weeks, I wish I could tell you, hours, days, I believe it was weeks, at least weeks, we got this piece—the first piece of work for Madison, which was the preferred stock issue.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

Mr. Massey, glad to have you here. I would like to just follow up on some of the questions that have been asked earlier today, if I can. Mr. Massey, prior to your involvement with Mrs. Clinton on the Madison Guaranty work, had you worked with her on any other matters?

Mr. MASSEY. I don't think so, sir, no.

Senator HATCH. This is the first time you had worked with her?

Mr. MASSEY. Yes, sir, I believe so.

Senator HATCH. How long had you been at the Rose Law Firm before you started working on the Madison Guaranty issues?

Mr. MASSEY. Approximately 8 months, Senator Hatch.

Senator HATCH. So it had been less than a year, approximately 8 months, before you got on to the Madison matter. Do you recall having brought in any substantial clients up to that point?

Mr. MASSEY. No, sir.

Senator HATCH. None.

Mr. MASSEY. No.

Senator HATCH. Did you have the authority as a first-year associate to agree to represent a particular client on behalf of the firm?

Mr. MASSEY. Not without a billing partner.

Senator HATCH. So you would not have had the authority?

Mr. MASSEY. No, sir, not by myself.

Senator HATCH. I understand that you are presently a partner with the law firm.

Mr. MASSEY. Yes, sir, I am.

Senator HATCH. When you worked with Mrs. Clinton, however, you were a first-year associate?

Mr. MASSEY. That's correct.

Senator HATCH. As you mentioned earlier today, you billed at a substantially lower rate than Mrs. Clinton did?

Mr. MASSEY. I think it's \$65 versus \$120.

Senator HATCH. I see. The term billing partner has been used a number of times today, most notably with reference to Mrs. Clinton's work for Madison Guaranty, and I take it that a billing partner is a fairly senior attorney in the firm; is that correct?

Mr. MASSEY. Now or then? Now we probably have junior partners—

Senator HATCH. I'm talking about then.

Mr. MASSEY. Probably more likely than now, yes, more senior.

Senator HATCH. When a client receives a bill from the Rose Law Firm, I would imagine that the billing partner's name would be prominently featured on that bill?

Mr. MASSEY. It would be—if you were—it would be the billing partner that would actually transmit the bill.

Senator HATCH. They would know the billing partner?

Mr. MASSEY. Usually under a cover letter.

Senator HATCH. And the billing partner would be the attorney ultimately responsible for the client; is that right?

Mr. MASSEY. Ultimately responsible for—

Senator HATCH. To the client.

Mr. MASSEY. With respect to the bill, yes, sir.

Senator HATCH. If Madison, for example, had been unhappy with the Rose Law Firm's work, it would have complained to the partner in charge?

Mr. MASSEY. That's a fair statement. I would say that's not invariable, but that's a fair statement.

Senator HATCH. But as I remember, not to the first-year associate working with the firm?

Mr. MASSEY. Latham, if my relationship with Latham at the time was such that if he were unhappy he might have complained to me, but I would say as a matter of protocol, yes, the client would refer to the billing attorney.

Senator HATCH. You don't recall him complaining to you?

Mr. MASSEY. No, sir. I did everything right.

Senator HATCH. To the best of your knowledge, are the billing records for Madison Guaranty that we looked at today, are they accurate to the best of your knowledge?

Mr. MASSEY. Best of my knowledge, yes, sir.

Senator HATCH. As far as you are aware, the billing records correctly represent the amount of time and thus the amount of billable hours spent by you and Mrs. Clinton on that client?

Mr. MASSEY. Yes, sir.

Senator HATCH. And the bill then accurately represents the proper fee to be charged Madison at the time, which at that time was a Federally-regulated institution?

Mr. MASSEY. Federal and State regulated, yes, yes, sir.

Senator HATCH. Both Federal and State. And as a partner of the Rose Law Firm, it's been mentioned here that you are familiar with the rules governing the practice of law in Arkansas, so you are aware that overbilling or misbilling attorneys' fees to a client might involve serious violations of both Federal and State law?

Mr. MASSEY. I am aware of that.

Senator HATCH. For example, if a lawyer misbilled or overbilled a client, he or she would be in violation of the Model Rules of Professional Responsibility which have been adopted by the Supreme Court of Arkansas, as I understand it, to regulate the ethical conduct of attorneys; is that right?

Mr. MASSEY. We take our billing very seriously, sir.

Senator HATCH. I know you do. I'm just establishing—

Mr. MASSEY. Yes, sir, you're correct.

Senator HATCH. Isn't it true that someone who represented that they did a certain amount of work for a client and billed that client at a partner's rate but did not actually do that work would have overbilled the client?

Mr. MASSEY. Excuse me, can you repeat that?

Senator HATCH. If someone represented that they did a certain amount of work for the client and billed the client at a partner's rate but actually they didn't do the work, then they would have overbilled the client; is that right? It goes without saying.

Mr. MASSEY. There may be other definitions of overbilling, but claiming one has done work that one hasn't done is overbilling.

Senator HATCH. I guess my concern here and the thing that worries you here is that Mrs. Clinton has said that she did not do much work on Madison Guaranty issues. She stated that you, Mr. Massey, were the principal attorney or the primary attorney in charge of the Madison work. But the billing records suggest that she was the partner in charge of this matter and that she did do the work for Madison, and I personally find it pretty hard to believe that a first-year associate would be put in charge of a client like Madison Guaranty, so either the billing records are accurate and Mrs. Clinton really did—let me rephrase that.

Even if the billing records are inaccurate and Mrs. Clinton really did not do much work for Madison Guaranty, or perhaps Mrs. Clinton's recollections are faulty, and I think it's important that we clear this up, and I think that's primarily what's been the issue here today, a lot more than some of the other issues that have been raised.

Mr. MASSEY. Senator Hatch, I'm happy to help you clear that up as much as I can.

Senator HATCH. I know, I know you are. I think you've been very forthright here and I commend you for it. Let me just say this. Not every record of an attorney's time is billed to the client; right?

Mr. MASSEY. No, sir, that's—yes, sir, that's correct.

Senator HATCH. Not every second. Not every second of your time is billed to the client. You indicated you might have missed a phone call or two here that you didn't put down.

Mr. MASSEY. Yes, sir.

Senator HATCH. Is it fair to say that the Rose Law Firm would not permit a first-year associate's work to go out without a partner's approval, at least at that time and probably today?

Mr. MASSEY. Senator Hatch, as I said, there might be matters and there might be a lawyer that—and there might be matters where we trust them to do work, some fairly routine matters, but matters—

Senator HATCH. Not something like this where you have Federal and State—

Mr. MASSEY. I would say this is a matter that if it were in-house today, we would want some partner review.

Senator HATCH. And it was probably true then, wasn't it?

Mr. MASSEY. Yes, sir.

Senator HATCH. That was your experience?

Mr. MASSEY. Yes, sir.

Senator HATCH. That was your experience in this matter?

Mr. MASSEY. Yes, sir.

Senator HATCH. I think what I am saying is that a first-year associate's work at that time or even today in the Rose Law Firm or basically any major law firm would not—that work would not go out without a partner's approval?

Mr. MASSEY. This kind of work—

Senator HATCH. Certainly that kind of work?

Mr. MASSEY. Probably the broker-dealer application, we would in all cases have a partner review.

Senator HATCH. But the bottom line, and I think what bothers a lot of people here, is that Mrs. Clinton was ultimately responsible for this work, the work we're talking about for Madison Guaranty; right?

Mr. MASSEY. She was definitely ultimately responsible for billing the work, and as you say, she most likely would have been the person, Senator Hatch, who would have been responsible for answering inquiries about what was going on with the client, how much were you going to charge me for this matter, that's generally in my experience in my firm the role of a billing partner.

Senator HATCH. And a billing partner would have reviewed your work that you did as a first-year associate and would have approved it or disapproved it?

Mr. MASSEY. Senator Hatch, I don't want to give you an answer that is without variation because I'd say generally that's true.

Senator HATCH. Sure, there's always some exceptions, perhaps, but in this case, with a State- and Federally-regulated institution, you would have been particularly careful in those matters?

Mr. MASSEY. Yes, sir, some of our larger clients will have a multiplicity of partners responsible for the relationship.

Senator HATCH. I think that's all, Mr. Chairman.

The CHAIRMAN. Let me ask you, Mr. Massey, given statements that were made—I don't want to go over them again—that which Mr. McDougal made, given the statements in the RTC, Mr. Latham made with respect to how the business came, given the fact that indeed Mrs. Clinton was the billing partner on this matter; is that correct? She was the billing partner on this matter?

Mr. MASSEY. Yes, sir.

The CHAIRMAN. She was the partner who supervised this matter; is that true?

Mr. MASSEY. She billed the matter, yes, sir.

The CHAIRMAN. She supervised your work on that?

Mr. MASSEY. She supervised my work.

The CHAIRMAN. I have no further questions.

Mr. CHERTOFF. And she took, as Mr. Ben-Veniste pointed out, she took responsibility for your work—

Mr. MASSEY. I didn't hear your whole question.

Mr. CHERTOFF. As Mr. Ben-Veniste observed to you, she had responsibility for your work as billing partner?

Mr. MASSEY. She would have been answerable to the client. Customarily with the billing partner, she would have been answerable to the client for questions about my work.

Mr. CHERTOFF. Now let me ask you, by the way, before I resume on the issue—

The CHAIRMAN. Your time is just about to run out. I want to see if we can, in the interest of the Committee Members here, conclude this before we go for lunch. So I'm going to turn to Senator Sarbanes because I don't want to have you in a situation where you go well over.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, as I understood it, at the conclusion of Mr. Massey, we were going to have Mr. Clark come to the table?

The CHAIRMAN. That is not my—

Senator SARBANES. That is what I thought you said to Senator Dodd.

The CHAIRMAN. No, I said we would review this. Now, I have no real objection myself, but let me say that we have not had an opportunity to review, Counsel informs me, the depositions. If we go into that, we will go well into the afternoon. It would be my intent, then, to suspend, to take at least an hour, come back with Mr. Massey and then go to Mr. Clark. I really don't see a useful purpose in that because we are really not prepared—you may have certain questions you want to ask him, but we're really not prepared to go forth with that.

I don't want to argue about that anymore, but this is your time, so if you have any further questions to ask Mr. Massey, why don't you do that. If not, then I'll have Mr. Chertoff continue his line of questioning.

Senator DODD. Mr. Chairman, just as a process question, because there have been issues raised about billing practices here. And this is for many of us here on the Committee who have practiced law,

however limited the time, this is fairly routine, to understand billing partners and the process within a law firm. I suspect to an awful lot of people, this is a rather arcane subject matter 60 hours and 15 hours and so forth, the dollar amount, \$7,200 and the like, can be a bit confusing to people.

It might be helpful in the context of trying to explain and put in layman's terms the general process of billing and how it works. We have the availability here of Mr. Clark who is the managing partner of the law firm, who is familiar with this process, because there has been a lot of confusion about this, that we take advantage of his presence here. The fact he has been deposed ought to make it somewhat—at least short-circuit the process a bit.

I understand the Chairman's point and I appreciate his making it, but it seems to me since we've spent at least a third of our time talking about these billing records, there have been a lot of accusations about how they, all of a sudden, appeared and so forth, it seems to me we ought to take advantage of this. This is an opportunity to shed some light on this, take a look at what it means, how it works, so that the public at large can have a deeper appreciation of what was going on here.

Senator SARBANES. A lot of assertions have been made in the public forum about those billing records and billing practices. It's important, I think, to try to develop what the facts are. Mr. Clark is in a position to help the Committee to do so. Now if no one had raised various assertions about them, if the Committee and its staff were in a sense saying well, we're going to lay it all out in the normal course and under the proper process, that would be one matter. But given that these assertions have been made, allegations have been raised off of them, it seems to me important for the Committee to try to come to grips with it and develop the facts as best it can. We have to stop this process of accusation and judgment first and facts later. We need to lay the facts out, and then we need to make judgments.

So there's a process now at work—I know there's a great desire to get out the First Lady on the part of some people, but indeed, it's not fair to her or anyone else not to develop the facts in an orderly process. And the Committee has an opportunity to do that here today and it seems to me we should take advantage of it.

The CHAIRMAN. Well, again, let me say I want it to be understood that the Majority has not had an opportunity to review the testimony of Mr. Clark. Now, Mr. Ben-Veniste, I don't contradict you generally. The fact is we have not had an opportunity to do so. We just got the transcripts yesterday. Second, he was not scheduled to be a witness. Obviously, the Minority had some contact with him, you indicate you had, and he came in when we were not prepared to examine him. Third, he was not the billing partner at the time. He was not the managing partner at the time. He is the managing partner now.

I will, in an effort to attempt to accommodate and to preserve the comity that Members of this Committee have demonstrated repeatedly, notwithstanding the highly-charged nature of these hearings, permit you to examine Mr. Clark for let's say, an hour.

I am going to limit it because he will be back and we have not had an opportunity to prepare. I am going to continue the examination of Mr. Massey.

We will adjourn for lunch for an hour, during which time I would hope that our staff would begin to review the depositions that we just received yesterday, and we will then bring him back for those purposes. So you can continue to examine Mr. Massey and we have some additional questions that we're going to ask him, then we will adjourn for lunch, and then we will take Mr. Clark. OK?

Mr. BEN-VENISTE. Mr. Chairman, it should be pointed out that our staff took the deposition—

The CHAIRMAN. I don't know how much more accommodating I can be. You want an opportunity to examine Mr. Clark, and we will do that. We want to conclude with the examination of Mr. Massey, and then we'll take Mr. Clark after a lunch break. My intent was to finish Mr. Massey and adjourn for the day. Obviously, the Members of the Committee feel strongly that they have questions that they would like to put to Mr. Clark. In an effort to accommodate them and be fair, I will do that. But under no circumstances will this be considered a full examination because there are other people that we also must examine in connection with the methodology for storing and maintaining records.

I think this is highly unusual, very presumptuous, but since you may have specific questions concerning the billing, I've attempted to accommodate you. Also, other Senators who are not here may want an opportunity to raise questions. Plus, our investigators are in the process of gathering information relating to the files, the manner in which the files were maintained, et cetera.

Having said that, for the limited purpose of discussing some of the methodologies or some of the questions concerning the billing, I will permit this to go forward in this manner. I don't know how much more accommodating the Chair can be, and if you want to accept that, please do. In the meantime, if you have any other questions you wish to pose to Mr. Massey, I suggest you do so.

Senator SARBANES. Mr. Chairman, I have an observation, and then I do have a question. First, it is not either unusual or presumptuous. And it seems to me if the Committee is going to do its work well, it needs to do it in a cooperative way which includes involving the Minority in trying to help shape the hearing schedule. We clearly understand that—

The CHAIRMAN. Senator Sarbanes, I am attempting to do that.

Senator SARBANES. I understand that.

The CHAIRMAN. This is the first I heard about Mr. Clark wanting to appear today. I have agreed with you that we'll do it. I told you though, that under no circumstances will this be considered to be the entire examination because there are other areas that we will explore. He is the managing partner now—and I don't know if it goes back to 1992 to 1994—there would be questions we wish to pose to him, so—

Senator SARBANES. I'm not suggesting that this would then be the end of Mr. Clark. If people want to have him for further questioning, I think that's fine. I have no problem with that.

The CHAIRMAN. Sure.

Senator DODD. Let's make it clear, too, as well. This wasn't a desire on the part of Mr. Clark to want to testify here today. This is a desire on the part of those of us up here, when it comes to the issue of what is substantial work and billing partners and literal work and supervisory work because so much is being made about Mrs. Clinton's statements regarding her involvement with this matter for the limited hours that have been agreed upon here.

The point is we have the managing partner here at a law firm who can give us, I think, some information and shed some light as to how this generally works. That's the value of it. This is not a desire on the part of the witness, at least to the best of my knowledge, to appear here on the witness stand before this Committee. That's the reason I brought it up earlier because I thought it made some sense.

We deposed him, as I understand it. Mr. Giuffra, the Counsel for the Majority did the deposition. So it's not as if the Majority is unfamiliar with what Mr. Clark is going to say, I presume, in a number of areas, unlike Mr. Massey who was not deposed before he came here.

So I hope we can get to it here. We don't need to belabor the point, but the reason for it is simply to try and deal with this set of facts and information in its totality with the presence in the room of someone who can shed some light on it. That's all.

Mr. BEN-VENISTE. I have no further questions for Mr. Massey. I think he has been very thoroughly questioned on matters within his personal knowledge.

The CHAIRMAN. Senator Bennett, do you have any additional questions of this witness?

Senator BENNETT. No.

The CHAIRMAN. Then I'll turn to Mr. Chertoff.

Mr. CHERTOFF. Mr. Massey, I want to go back to where we were before we digressed here and talk about your initial summary of how it is that this matter came in. I think you indicated that you had had a lunch with Mr. Latham. You had discussed with him, jeez, in substance, wouldn't it be great if we could do some business. And then, as I think you said weeks, perhaps months, later, this matter comes in?

Mr. MASSEY. Some period of time, yes, sir.

Mr. CHERTOFF. Do you know how Mrs. Clinton came to be the billing partner?

Mr. MASSEY. No.

Mr. CHERTOFF. You didn't ask her to be the billing partner?

Mr. MASSEY. I don't recall asking her to be the billing partner.

Mr. CHERTOFF. And it's not the kind of thing—

The CHAIRMAN. Mr. Massey, I think you have been very cooperative. If you asked Mrs. Clinton to be the billing partner, wouldn't that be something—notwithstanding that it was 10 or 11 years ago—that you would recall?

Mr. MASSEY. That's fair.

The CHAIRMAN. Is that fair?

Mr. MASSEY. That's fair.

The CHAIRMAN. In the interest of preserving your credibility and clarifying your testimony, when you say, "I don't recall," you mean, you did not ask her to be the billing partner; isn't that true?

Mr. MASSEY. Sir, 11 years ago——

The CHAIRMAN. I'm trying to be fair, but we just established this would be something that you would recall; yes or no?

Mr. MASSEY. That's true.

The CHAIRMAN. Did you ask her to be the billing partner?

Mr. MASSEY. I don't think so.

The CHAIRMAN. All right. That's better than I don't recall.

Mr. MASSEY. I should remember it. It could have happened. I don't think I did. That's the best I can do.

The CHAIRMAN. It could have happened. I mean, Mr. Massey, you get this matter. Mrs. Clinton is not in your section. Now explain to me why that is not consistent. She doesn't do securities work. She's not in the general area of the firm that handles this work; is that correct?

Mr. MASSEY. No, she was not.

The CHAIRMAN. So that's correct?

Mr. MASSEY. Yes, sir, that's correct.

The CHAIRMAN. So consequently, if you asked her, a partner outside of this area, to be the billing partner, wouldn't you recall that?

Mr. MASSEY. Yes, sir.

The CHAIRMAN. Thank you.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Now bearing that in mind, we also got into the question of to what extent Mrs. Clinton actually reviewed this area, whether you did most of the work. I take it you did the legal research; right?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. You hit the books; right?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. That's typically what an associate at a law firm does; correct?

Mr. MASSEY. Yes.

Mr. CHERTOFF. You would expect an associate at the firm, at the time you were an associate at the Rose Firm, to be doing most of the initial drafting; correct?

Mr. MASSEY. Yes.

Mr. CHERTOFF. And as you've already told us, Mrs. Clinton was not an expert or someone with knowledge about the area of securities law involved here; correct?

Mr. MASSEY. She was not.

Mr. CHERTOFF. That's what she's acknowledged. And therefore, it would not make much sense for you to have her doing a lot of library work on this matter, would it?

Mr. MASSEY. No.

Mr. CHERTOFF. Now if we look at the work she actually did, most of the work she did was on the telephone; isn't that correct?

Mr. MASSEY. I'll be glad to review the records, but that appears to be——

Mr. CHERTOFF. Take your time.

Mr. MASSEY. That would be my general reaction to it.

Mr. CHERTOFF. I don't want to rush you.

Mr. MASSEY. On which matter now?

Mr. CHERTOFF. We are on the preferred stock matter, DKSN 28943. We'll give you some time to——

Mr. MASSEY. 28943? Are you taking conferences as telephone conferences?

Mr. CHERTOFF. Well, when it says "telephone conference," I'm taking it as telephone conference. I take it in your view, conference without telephone could be either a telephone conference or a nontelephone——

Mr. MASSEY. That's correct. At least that's the way I do it.

Mr. CHERTOFF. By the way, who is W. Gregory?

Mr. MASSEY. W. Gregory——

Mr. CHERTOFF. On the first entry.

Mr. MASSEY. Watt was the practice manager—he was the manager of the securities practice at that time. He was sort of—let's call him a managing partner of the securities section.

Mr. CHERTOFF. He was an attorney?

Mr. MASSEY. Yes, sir, he was a senior partner in the firm.

Mr. CHERTOFF. You didn't have a conference with Mr. Gregory, did you?

Mr. MASSEY. Well, he's showing that I had one with him.

Mr. CHERTOFF. Where does it show that you had a conference—where does that show up?

Mr. MASSEY. It doesn't show up.

Mr. CHERTOFF. I beg your pardon?

Mr. MASSEY. I don't see a reference to the conference by me with him. That's not to say I didn't have one.

Mr. CHERTOFF. All we have here is Mrs. Clinton, and she has a conference with Mr. McDougal and Mr. Latham. That's the client; right?

Mr. MASSEY. Yeah, which reference are you——

Mr. CHERTOFF. I'm at the very top line, "HRC, April 23"?

Mr. MASSEY. Yes, correct.

Mr. CHERTOFF. It's the first entry on this matter; correct?

Mr. MASSEY. That's correct.

Mr. CHERTOFF. She has a conference with Mr. McDougal and Mr. Latham. That's the client; right?

Mr. MASSEY. That's correct.

Mr. CHERTOFF. She has a conference with you?

Mr. MASSEY. Yes.

Mr. CHERTOFF. She has a conference with Mr. Gregory who's the lawyer at the head of the practice; right?

Mr. MASSEY. That's correct.

Mr. CHERTOFF. Did you work with Mr. Gregory on this?

Mr. MASSEY. Could have, some.

Mr. CHERTOFF. Do you see it on the time records?

Mr. MASSEY. No. On this page, I don't see any reference to a conference with Mr. Gregory. It is very possible, I'll tell you, that I had some discussions with him and I think there are entries in here, in the time records, in which I did have discussions with Gregory.

Mr. CHERTOFF. But not in this initial phase of putting——

Mr. MASSEY. It doesn't appear that that happened.

Mr. CHERTOFF. Then the next day for an hour and a half, she has a telephone conference with you and John L., and then Davis Fitzhugh. Who is Davis Fitzhugh?

Mr. MASSEY. Davis Fitzhugh was another senior executive at Madison Guaranty.

Mr. CHERTOFF. With these records in mind, I mean, this conference here on the second day, what was Mr. Fitzhugh's role in this stock offering issue?

Mr. MASSEY. Sir, I don't know.

Mr. CHERTOFF. Do you know what his role at the bank was?

Mr. MASSEY. He was a lawyer. He worked with me on the broker-dealer side of the transaction. He was more involved in that. I'm not sure what his responsibilities were in 1985.

Mr. CHERTOFF. On this day, there was a conference that Mrs. Clinton is having with you and some of the bank officials; is that correct?

Mr. MASSEY. Excuse me, sir, where are you again?

Mr. CHERTOFF. I'm still on the second day, April 24th.

Mr. MASSEY. Yes, sir, that's correct.

Mr. CHERTOFF. Then we move to the next day, April 25th. She reviews the subscription agreement and has another call with you; is that correct?

Mr. MASSEY. That's what it says.

Mr. CHERTOFF. And you have on your record for the same day a conference with John Latham and Hillary Rodham Clinton. Now, I see there that you have John Latham, Hillary Rodham Clinton. Was it your custom when you did your bills if you had multiple people in a single conference to have commas between them, but if you had separate events to have a semicolon for that?

Mr. MASSEY. I wish my practice were that precise. But I can't say that.

Mr. CHERTOFF. You can't tell us——

Mr. MASSEY. I said that's the way I would like to have it done, but I can't go to every billing record and say that's the way I have done it.

Mr. CHERTOFF. The next entry she has on this page is April 29, where she has a telephone conference with Beverly Bassett; right?

Mr. MASSEY. Yes.

Mr. CHERTOFF. You don't remember participating in that conference?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. You don't remember her telling you what transpired in the conference?

Mr. MASSEY. No.

Mr. CHERTOFF. You did know that Mrs. Clinton knew Beverly Bassett?

Mr. MASSEY. I'm not sure of that, other than maybe casually, but I at least knew Beverly Bassett.

Mr. CHERTOFF. Was it your understanding at the time that Mrs. Clinton had any kind of relationship with Beverly Bassett?

Mr. MASSEY. Probably.

Mr. CHERTOFF. Probably?

Mr. MASSEY. Probably some kind of relationship.

Mr. CHERTOFF. And you knew, of course, that Governor Clinton had appointed Beverly Bassett?

Mr. MASSEY. I have been asked that before and I am not sure if I knew that in 1985.

Mr. CHERTOFF. Did Mrs. Clinton ever discuss with you whether she ought to be dealing directly with Beverly Bassett?

Mr. MASSEY. Did I discuss that with Mrs. Clinton?

Mr. CHERTOFF. Yes.

Mr. MASSEY. No.

Mr. CHERTOFF. Did she ever say to you, you know, maybe it's not a great idea for me to be in direct contact with Beverly Bassett?

Mr. MASSEY. No, sir, I don't remember that.

Mr. CHERTOFF. And you don't know how long her telephone conference with Beverly Bassett is on this day?

Mr. MASSEY. I do not know.

Mr. CHERTOFF. You can't tell us why she felt a need to pick up the phone and deal directly with the Commissioner, with the head of the department?

Mr. MASSEY. I wasn't on the call. I'm not sure why she did it.

Mr. CHERTOFF. Who did you deal with at the department for the most part when you were working on this issue?

Mr. MASSEY. Actually, we didn't have many dealings with the department in the preferred stock issue. But the person in charge of savings and loan regulatory matters within that department at that time was a fellow by the name of Charles Handley.

Mr. CHERTOFF. And that's the person you dealt with?

Mr. MASSEY. Yes, primarily on the broker-dealer applications, you'll see in the correspondence.

Mr. CHERTOFF. You said you didn't have many dealings with the department on the preferred stock issue, and again, just to understand, that's the request for permission to issue preferred stock?

Mr. MASSEY. To create a class of preferred.

Mr. CHERTOFF. Why was it that you didn't feel a need to have conversations with the department about that issue?

Mr. MASSEY. As I said before, I thought that this was a pretty easy legal issue. I didn't think there was a lot of controversy about it. It wouldn't be one, in my opinion, where—it was my understanding that the Arkansas Securities Department had had discussions, and I think it's in the records we've produced, had had discussions with the securities—that Madison officials, I think Davis Fitzhugh, had had discussions with the securities department prior to 1985 about issuing preferred. They had generally—this is—I don't have the documents in front of me, but they had generally agreed, but they wanted a legal opinion.

Mr. CHERTOFF. So your understanding is that the bank had raised the possibility of issuing this stock as early as 1984?

Mr. MASSEY. No, sir, it's not. I don't have a date on it. I just understand that, prior to our engagement to render a legal opinion, there had been some discussions, and I believe there's a memorandum that we produced, Mr. Fitzhugh—reflecting a conversation between Fitzhugh and Charles Handley, that basically recites some discussion or conference or meeting with regard to this preferred, and his recitation was Handley generally agrees with us—again, I'm paraphrasing. I don't have the documents—Handley generally agrees with us, but he wants a legal opinion.

Mr. CHERTOFF. Handley is the regulator who was actually the hands-on regulator; right?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. And he was being cautious; right?

Mr. MASSEY. He was very cautious.

Mr. CHERTOFF. He wanted to have a legal opinion; correct?

Mr. MASSEY. That's the way I'd do it.

Mr. CHERTOFF. So from your standpoint, as you understood the law, this issue—at least the first step of this—I gather the second step of getting the broker-dealer is a little more complicated; right?

Mr. MASSEY. Actually, the second step would have been going back to the—to be technically correct, and I know it's late, but for the record, the second step would have been to receive the approval of the Arkansas Securities Department with respect to a specific issue of preferred to a particular investor.

Mr. CHERTOFF. That would be more complicated?

Mr. MASSEY. That would require a great deal, in my opinion, more discretion on the securities department's behalf.

Mr. CHERTOFF. So although this initial legal question was, in your mind, cut and dried, you could see down the line that issues of discretion by Beverly Bassett would become significant issues, she would have to make judgments that were discretionary judgments down the line?

Mr. MASSEY. I can say that now. If I could see that as an 8-month associate, I should have seen it, yeah, but I don't know that I did.

Mr. CHERTOFF. But you had a partner working on the case who had more experience, and that was Mrs. Clinton?

Mr. MASSEY. She had been a lawyer a lot longer than I had.

Mr. CHERTOFF. So although at these initial stages when you were first putting together this legal opinion, you didn't see a need to have direct contact with the Arkansas Securities Department. The record does reflect that Mrs. Clinton felt a need, that first week, to pick up the phone and talk with Beverly Bassett. You'll agree with that; correct?

Mr. MASSEY. She obviously had a call.

Mr. CHERTOFF. How did you discover that Mr. Handley was the person you should deal with at the department?

Mr. MASSEY. I don't know. My impression is—and it's only an impression because again, I'm talking about a long time ago—is that I was told that by Latham or Davis Fitzhugh.

Mr. CHERTOFF. In other words, the bankers themselves——

Mr. MASSEY. Again, the memo that I recited to you earlier was handed to me at the initial—one of these initial meetings, and I believe it was reflective of a conversation that Davis Fitzhugh had, and it said Handley. I think I would have known to address——

Mr. CHERTOFF. Is Mrs. Clinton at this initial meeting you're talking about?

Mr. MASSEY. Initial meeting with——

Mr. CHERTOFF. When you say you were handed this memo?

Mr. MASSEY. I'd have to refer to the timesheets, Mr. Chertoff.

Mr. CHERTOFF. Take a moment and look. I don't want to push you.

Senator DODD. Mr. Chairman, while the witness is doing that, it might be worthwhile to point out, what has Ms. Bassett said about all this, and in response to a question almost 2 years ago on CNN, Ms. Bassett was apparently asked about the phone conversation.

I'm quoting Ms. Bassett now in response to this general line of questioning. She said Mrs. Clinton, "Made one telephone call ear-

lier in the process probably sometime after we had received their letter but before I wrote my letter to the Rose Law Firm. And it was a perfunctory, very brief, nonsubstantive conversation basically consisting of we have sent something over there, we have a letter. Who should we work with?"

Now that's Ms. Bassett in response to the same line of questioning. It seems to me that that might be helpful to the Committee to know exactly what her memory is on this rather than just referring to time records here. So I think—I mean that's how she describes it as the regulator.

The CHAIRMAN. And that has been part of the record, and we will ask Ms. Bassett to come in.

Mr. CHERTOFF. Can you identify which entry relates to this first meeting where you got this memo?

Mr. MASSEY. Mr. Chertoff, it probably—and again, I'm going to do the best I can—it probably would have been the 4/23/85 entry, "Research on preferred conference with Latham, conference with Clinton, conference with Baledge." That's probably when it would have been. It would have been early on.

Mr. CHERTOFF. So your belief is, as of the time you started the project, you get information from the people at the bank, they have already been dealing with the regulators?

Mr. MASSEY. They have clearly had a discussion with the regulators.

Mr. CHERTOFF. So you knew coming into this, before you put this letter together, you knew to whom to direct your correspondence because you had it from the bankers?

Mr. MASSEY. I don't want to go that—I would say I think I did. I think this memo said conference with Handley. I wish I had it in front of me, and I would be better at it. But yeah, I think I probably knew.

Mr. CHERTOFF. You didn't need Mrs. Clinton to call up Beverly Bassett, the Commissioner of Arkansas Securities, in order to get an address or the name of a person because you had a prior—the bank had a prior course of dealing with Mr. Handley; correct?

Mr. MASSEY. Sir, I don't have an explanation for the call on the 29th. I don't have a recollection of being involved in it, and I can't help you—

Mr. CHERTOFF. Did you ask Mrs. Clinton to call up the Arkansas Securities Department and say a letter is coming over?

Mr. MASSEY. I don't think so. It would be more likely for a partner to ask an associate to perform a task.

Mr. CHERTOFF. In fact, I assume that when you were an associate during those years, 1984, 1985, maybe 1986, from time to time, you did perform that function of picking up the phone, calling a regulator and saying something is on its way over?

Mr. MASSEY. As you can tell from the records, from the time records, eventually, I became conversant with Mr. Handley and dealt with him directly. And I think the correspondence and time records show that.

Mr. CHERTOFF. Because given the fact that an associate bills at a cheaper rate than the partner, you would expect the associate to do the perfunctory calls and the partner to do the more serious, substantive calls; correct?

Mr. MASSEY. That's pretty much the way it works.

Mr. CHERTOFF. I would like to put up on the Elmo what has been marked as Bates RS 537. I think you have it in your package.

Mr. MASSEY. Oh, I'm sorry. I was waiting to see it on the screen.

Mr. CHERTOFF. It's a copy of a letter to Hillary Rodham Clinton at the Rose Law Firm, May 14, 1985, Dear Hillary.

Mr. MASSEY. Yes, I have it.

Mr. CHERTOFF. Have you seen this letter before?

Mr. MASSEY. Absolutely.

Mr. CHERTOFF. This is the letter that came back in response to your request for a favorable opinion from the Arkansas Securities Department on this issue; correct?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. When did you see this letter for the first time?

Did Mrs. Clinton call you in and show it to you?

Mr. MASSEY. I don't recall, sir.

Mr. CHERTOFF. There's no cc or indication you have been copied on the letter?

Mr. MASSEY. No. Nobody was copied on the letter.

Mr. CHERTOFF. No one was copied. The only letter—the only copy of this that came into the firm was the original, which went to Mrs. Clinton?

Mr. MASSEY. That's correct. That's what it appears.

Mr. CHERTOFF. Then I want to put up what has been Bates stamped as 84. It's on Rose Law Firm stationery. It's to Mr. Jim McDougal, May 23, 1985, signed by Mrs. Clinton.

Mr. MASSEY. Yes, sir. I've seen that, yes, sir.

Mr. CHERTOFF. You have seen this. It says, "Enclosed is a letter for your files from Beverly Bassett approving the proposed authorization and issuance of a class of nonvoting preferred stock. We appreciate the opportunity to work for you and look forward to continuing success in resolving whatever questions arise as you pursue your plan for growth."

Did Mrs. Clinton discuss with you whether you ought to sign this letter or she ought to sign the letter?

Mr. MASSEY. I dare say I didn't know the letter was going out.

Mr. CHERTOFF. It does indicate you got a copy of it. Do you remember getting a copy?

Mr. MASSEY. It does indicate it, yes, sir.

Mr. CHERTOFF. What was the enclosure?

Mr. MASSEY. Sir, I assume it was this.

Mr. CHERTOFF. So you assume—

Mr. MASSEY. I'm sorry. I assume it was the letter from the Arkansas Securities Department to Mrs. Clinton.

Mr. CHERTOFF. So you assume that Mrs. Clinton—and this I assume is based on your experience—you assume that Mrs. Clinton sent to Mr. McDougal a copy of the letter she had received from Beverly Bassett saying Dear Hillary, it's approved; is that correct?

Mr. MASSEY. Yes, sir.

Senator SARBANES. Well, you don't assume it. That is what the letter says, doesn't it?

Mr. MASSEY. I guess—yes.

Senator SARBANES. You don't have a copy of the letter?

Mr. MASSEY. It doesn't say—

Mr. CHERTOFF. It says, "Enclosed is a letter from Beverly Bassett"?

Mr. MASSEY. It doesn't refer to a date of the letter. I assume there might be another letter but——

The CHAIRMAN. I think we can all assume that it's the same letter in question.

Mr. MASSEY. I can't argue with that.

Mr. CHERTOFF. I want to direct your attention to the period in 1992 when Mr. Foster asked you for your documents. That was in February 1992?

Mr. MASSEY. Sir, as I told you before, it was around the time the articles began to come out in the paper because the purpose for—the stated purpose for Mr. Foster's visit to me at that time was there's a lot of bad stuff in the press. We need to correct this, and I'm putting together a firm—these aren't exact words, and it's been a few years—but basically, I'm putting together a firm response, and I'd like your files.

Mr. CHERTOFF. Now, Mr. Massey, you had in your files copies of your work with respect to the stock offering and with respect to the broker-dealer application?

Mr. MASSEY. Yes, sir, my work files.

Mr. CHERTOFF. You had nothing with respect to IDC; correct?

Mr. MASSEY. No, sir—yes, sir, that is correct.

Mr. CHERTOFF. You had nothing with respect to any option between Seth Ward and the Madison Guaranty?

Mr. MASSEY. I did not have those files, no, sir. Those would not have routinely been kept with me. What I'm talking about are files in which I was the primary worker bee, and I had the involvement. And these were my files that were kept on my floor of the firm, in my section and under my control.

Mr. CHERTOFF. Did you have drafts of documents and notes that you had prepared also in your files?

Mr. MASSEY. I don't think so. I don't think there were. Whatever was produced was in my files.

Mr. CHERTOFF. And you collected——

Mr. MASSEY. I think there may have been a few drafts.

Mr. CHERTOFF. And you collected the material together? You collected this material——

Mr. MASSEY. I got the files.

Mr. CHERTOFF. You made copies?

Mr. MASSEY. I made copies.

Mr. CHERTOFF. You made them yourself?

Mr. MASSEY. I made most of them myself. I was very busy at the time, and I don't think I finished the job, and I asked my secretary, I think, or maybe a file clerk, to do it. But when I got them back, I took the stack of documents that had been copied, and I took my files, and I compared them page by page.

Mr. CHERTOFF. Can you give us a sense of how big the volume of documents was?

Mr. MASSEY. Inch and a half.

Mr. CHERTOFF. You took those documents into Mr. Foster?

Mr. MASSEY. He came to me. He came to me the next day.

Mr. CHERTOFF. You gave him the copy—one set of copies; right?

Mr. MASSEY. Yes.

Mr. CHERTOFF. Did he ask you whether you were keeping a copy?

Mr. MASSEY. He asked—I don't want to give you a lawyerly answer to that question. He asked me why it was taking so long for me to get the files, and I told him I was copying them.

Mr. CHERTOFF. What was his attitude?

Mr. MASSEY. He was impatient.

Mr. CHERTOFF. He was impatient?

Mr. MASSEY. He was seemingly impatient, he wanted the records.

Mr. CHERTOFF. Did he express frustration over the fact that you had made copies?

Mr. MASSEY. He expressed frustration over the fact that I wasn't prepared to hand off the files without having a complete set of copies in my possession.

Mr. CHERTOFF. How did he express that frustration?

Mr. MASSEY. He was just—he was—I have a picture of it in my mind. It's hard to give you a word that expresses it. Vince was not a particularly outgoing person. He sort of stoved up and walked off. He just—he was—kind of walked off.

Mr. CHERTOFF. And he walked off with the set of files you were given?

Mr. MASSEY. No, he walked off without my files first because I hadn't completed copying them and verifying that what I was going to hand him and what I had were the same things.

Mr. CHERTOFF. But your understanding, your impression was that he was frustrated you were making copies of these things?

Mr. MASSEY. That was my general impression; about making copies, he was frustrated. Now whether he was frustrated because he was having to wait for the files, whether he was frustrated because I was making copies; he was frustrated that he had asked me for the files, he came back the next day, I didn't have them. I told him I wasn't done, I wanted to finish copying them, and he stomped off.

Mr. CHERTOFF. How much later did you get him the files?

Mr. MASSEY. I think that was a morning in 1992—that was a morning, and I think I got them to him later in the afternoon after I had a chance to go through my packet and the packet I was handing him.

Mr. CHERTOFF. During that period of time, did you have occasion to see a run of timesheets like the ones we've been looking at here that were printed out?

Mr. MASSEY. Sir, I can say with certainty that I have not seen this pack of documents until Monday.

Mr. CHERTOFF. Let me also ask, and I want you for purposes of this, to—

Mr. MASSEY. And I also want to say with certainty, just so it is clear, everything in my files in 1992 has been produced to this Committee, to various regulatory bodies, to the Independent Counsel. I am comfortable that what I had and what I compared have been—all those papers have been produced.

Mr. CHERTOFF. This is again—we want to make sure you are not putting yourself on the hook for something you can't take responsibility for—

Mr. MASSEY. I appreciate you looking out for me.

Mr. CHERTOFF. You're talking about your personal set of files?

Mr. MASSEY. These are my files, yes, sir. The firm's files, I don't have personal knowledge as to how those were dealt with.

Mr. CHERTOFF. That would exclude billing records because you wouldn't have kept billing records?

Mr. MASSEY. The billing attorney usually kept those.

Mr. CHERTOFF. Did you talk to any other lawyers at the firm at this time who had been back at the firm in the mid-1980's about—during the time you were making these files for Mr. Foster about whether they were being asked to produce copies of documents to Mr. Foster?

Mr. MASSEY. No, sir, I don't think so. I don't recall a conversation like that. It is possible, but I don't think so. The people that I worked with primarily—I was the only guy in my section who had any Madison files, and I don't believe I had any discussions, but it's possible.

Mr. CHERTOFF. Well, it had to be a pretty extraordinary event in your life to have a former partner in your firm, or current partner in the firm, being part of a Presidential campaign as the potential First Lady; correct?

Mr. MASSEY. It was and continues to be an event in my life.

Mr. CHERTOFF. It had to have been a subject of discussion around the firm; is that fair to say?

Mr. MASSEY. Absolutely.

Mr. CHERTOFF. When Mr. Foster came to you and said I want these documents, we have to prepare a response, you were aware of what had been appearing in the press?

Mr. MASSEY. With respect to the Madison representation?

Mr. CHERTOFF. Right.

Mr. MASSEY. Yes, I was painfully aware of it.

Mr. CHERTOFF. So you probably discussed that with other lawyers in the firm; right?

Mr. MASSEY. Yes, there was a lot of general discussion about it, casual type discussions.

Mr. CHERTOFF. Of course, by that time, you knew that Mr. McDougal had already been through a trial where he was indicted and ultimately acquitted, you knew that?

Mr. MASSEY. Yes.

Mr. CHERTOFF. At that time, in 1992, you learned about, for the first time, about the Whitewater deal?

Mr. MASSEY. That's correct.

Mr. CHERTOFF. Did you have conversations with anyone at the firm at that point in time about whether it was appropriate for Mrs. Clinton to be doing legal work for Mr. McDougal's bank and having a side business deal with Mr. McDougal?

Mr. MASSEY. It's very possible. There were a lot of—I was in the center of this fire storm, and I had—it was an important issue to me. I think it was an important issue to a lot of my partners, and I would be less than candid with you if I said this didn't raise a lot of discussions. This causes one to be introspective about your practice.

Mr. CHERTOFF. What was your own view? Was it your view that you were disturbed that Mrs. Clinton had been representing Mr.

McDougal's bank and had not disclosed, at least to you, that she had a separate business relationship with Mr. McDougal?

Mr. MASSEY. Disturbed is strong. I was a little surprised, I was disappointed.

Mr. CHERTOFF. In 1992, is it fair to say that you were aware, as most other lawyers were, of what was going on—what has been described as the savings and loan crisis?

Mr. MASSEY. Sure. I mean, generally aware.

Mr. CHERTOFF. And you were aware that one of the issues that sometimes came up was professional liability?

Mr. MASSEY. Sure.

Mr. CHERTOFF. That meant the liability on the part of lawyers or accountants or other professionals who had rendered services to savings and loans; right?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. And did you—let me ask you—

Mr. MASSEY. As a matter of fact, we have experts in our firm that did that kind of work, so yeah.

Mr. CHERTOFF. In 1992, did you discuss with Mrs. Clinton at all the work you had done and she had done with respect to Madison?

Mr. MASSEY. Sir, I can tell you with the highest degree of certainty, looking you straight in the eye, I have not had any conversations with Mrs. Clinton about this representation since we did it in 1985.

Mr. CHERTOFF. Now still focusing your attention on this period of time, in 1992, trying to get your state of mind, and frankly the state of mind of people at the firm, would you say people at the firm were generally aware of the issue of professional liability, that is to say law firm liability with respect to savings and loans?

Mr. MASSEY. Sir, you're asking me—again, I want to be careful about testifying as to what other people's mental state was.

Mr. CHERTOFF. To the best of your knowledge, what was discussed—

Mr. MASSEY. Of course, it is common knowledge that lawyers and accountants for S&L's get sued for malpractice. It's common knowledge. Now whether a particular individual might have been aware of that, I assume that anybody in my firm would know that.

Mr. CHERTOFF. You have told us what you felt was disappointment at the fact that Mrs. Clinton had not disclosed to you, when you were working with her and representing Madison, her separate business arrangement with respect to Mr. McDougal. Did you ever discuss that disappointment with anybody else at the Rose Law Firm?

Mr. MASSEY. Probably.

Mr. CHERTOFF. Do you have any idea who?

Mr. MASSEY. No.

Mr. CHERTOFF. Did you talk to the managing partner?

Mr. MASSEY. No.

Mr. CHERTOFF. Did you talk to the partners in your own section?

Mr. MASSEY. Probably, just casually, yes.

Mr. CHERTOFF. Well, what is your best recollection of who you spoke to?

Mr. MASSEY. It would have been some partners in my section, but again, I don't have a recollection of specific conversations. I

said probably because it was new, I think, to most of us, this investment, how it affected the public's image of us, our relationship with State regulators. It was new to us. We were taking a lot of heat for it.

I was disappointed. I think a lot of people were disappointed in the way it was—in the press that we were getting. But I'll tell you, I don't think I can recall for you specific conversations with specific individuals.

Mr. CHERTOFF. Do you have a firm policy concerning investments by lawyers with clients for whom they're doing work?

Mr. MASSEY. We do today, yes, sir, we do.

Mr. CHERTOFF. Is that a policy that has been put into effect since 1992?

Mr. MASSEY. Can I—

Mr. CHERTOFF. Sure, if you want to refresh your memory.

[Witness conferred with counsel.]

Mr. MASSEY. I think the question is what was the policy in 1992. I'm not prepared to tell you what that would have been.

Mr. CHERTOFF. The question is whether there is a new policy since 1992.

[Witness conferred with counsel.]

Mr. MASSEY. Ron tells me there is not a new policy since 1992.

Mr. CHERTOFF. Did you have any understanding, from either your own knowledge or from your discussion with others within the firm, as to what the firm's policy was, whether it be written or unwritten about whether a partner who was taking on a representation of a client to whom the partner is supposed to be giving dispassionate legal advice, whether there was a conflict if that partner has a private business relationship with one of the officers of—

Mr. MASSEY. Are you asking me if that's a conflict of interest?

Mr. CHERTOFF. I'm asking if there was any policy about having an intermingling of those relationships, representing a bank or client on the one hand as a lawyer at a firm and having private business with one of the principals or one of the owners or officers of that client?

Mr. MASSEY. Policy in the sense of—I want to be candid with you. Did we have a promulgated written policy in 1992 with respect to the kind of investment that we know she had as of that time that would have required disclosure or prohibition?

Mr. CHERTOFF. Yes.

Mr. MASSEY. I don't think so, but I am really hesitant without having an opportunity to review those. To be honest with you, I would love to tell you.

Mr. CHERTOFF. Putting aside a formal policy, just as a matter of—I mean, how big was the Rose Law Firm in the 1980's?

Mr. MASSEY. As I said before, 40 lawyers, maybe 25 partners.

Mr. CHERTOFF. So it is not a large law firm like my law firm is or Richard's law firm is?

Mr. MASSEY. We were pretty small.

Mr. CHERTOFF. You were real partners and you were a small group?

Mr. MASSEY. We were a pretty small group with a few partners.

Mr. CHERTOFF. And amongst yourselves you had to have a sense of a certain obligation of trust and candor and trust as partners?

Mr. MASSEY. I expect that from my partners.

Mr. CHERTOFF. You expect partners to inform you about matters that might in any way cast a shadow upon the appearance of propriety at the law firm; isn't that right?

Mr. MASSEY. Sir, you're asking me my expectations?

Mr. CHERTOFF. Yes. Is it fair to say in 1992 after you discovered, after having worked on this very project involving Madison, that there was a separate business relationship between Mrs. Clinton and Mr. McDougal that you were upset because you felt it was inconsistent with your own view about how partners ought to deal with each other?

Mr. MASSEY. Sir, this is again sort of a resegment of your earlier question. I told you I was disappointed. The water is under the bridge. It had happened. We were taking heat for it. What my mental state was was disappointment. I was disappointed.

Mr. CHERTOFF. Now let me focus this back on the discussion we've had with respect to the turning over of these documents and what was going on at the law firm with Mr. Foster in 1992 when the documents were being collected. You understood that Mr. Foster was collecting these documents on behalf of the campaign?

Mr. MASSEY. No, sir. I told you—

Mr. CHERTOFF. It was on behalf of the firm?

Mr. MASSEY. On behalf of the firm.

Mr. CHERTOFF. Is this because the firm felt a need to have some kind of a public position that the firm was going to take with respect to this matter?

Mr. MASSEY. Sir, it was a very frustrating time. We were—there was a lot of—there were a lot of newspaper articles. There were a lot of them that grossly misstated the facts. Some of us, including me, had attempted to try to set the record straight with some reporters, and it didn't work, so it was not a bad idea in my mind.

Mr. CHERTOFF. Did you initiate the idea, or did you learn about it when Mr. Foster raised it?

Mr. MASSEY. He came to me.

Mr. CHERTOFF. Was he the designated person who was responsible for handling this on behalf of the firm?

Mr. MASSEY. That was my understanding that he told me. Now could he have been designated by other people, yes.

Mr. CHERTOFF. The reason this is important and the reason I'm—

Mr. MASSEY. I want to—just for a second, designation in terms of firm management asking Vince to do this work, I'm not sure of that. It could very well have been that he decided to take it on himself or—I don't remember my impression.

Mr. CHERTOFF. The reason I am asking you about your mental state is because I am trying to get a picture of what's going on in the firm at the time these records are being collected.

Mr. MASSEY. I understand.

Mr. CHERTOFF. Tell me if I'm correct in substance in my understanding of what's going on. These stories are appearing in the newspaper, and they are frankly news to you; correct?

Mr. MASSEY. Yes.

Mr. CHERTOFF. Certainly, the business relationship between Mrs. Clinton and McDougal is news to you and many of your partners?

Mr. MASSEY. Mischaracterization; new news.

Mr. CHERTOFF. And you feel, professionally as well as personally, that the firm ought to take some steps to put its side of the story or at least to collect the facts?

Mr. MASSEY. I was happy to accommodate that effort.

Mr. CHERTOFF. Now, your understanding is that Mr. Foster was collecting the documents for purposes of handling the firm's—

Mr. MASSEY. That was my understanding. That's the impression I got from him when he came to me for the records.

Mr. CHERTOFF. He did not come to you and say we are going to take these over to the campaign?

Mr. MASSEY. Absolutely not.

Mr. CHERTOFF. Did you have any understanding that there was a point in time in which Mr. Foster was going to—

Mr. MASSEY. I want to emphasize. I would not have let him have records—I would not have given him my files had I known they were going to leave the firm. I wouldn't have done it.

Mr. CHERTOFF. Why is that?

Mr. MASSEY. Because they are our files. They didn't belong to the campaign. It wasn't the campaign's—it wasn't their property. That's my own opinion. I'm being candid with you.

Mr. CHERTOFF. Let me explore that with you a little bit. Actually, to the extent that the files reflect correspondence or work done on behalf of the client, am I correct that actually the client is really the owner of the files?

Mr. MASSEY. Sure.

Mr. CHERTOFF. In this case, the work that you did on Madison, for example, Madison was the client; right?

Mr. MASSEY. That's correct.

Mr. CHERTOFF. In fact, it wasn't Mr. McDougal personally, but it was the bank, the savings and loan?

Mr. MASSEY. Yes.

Mr. CHERTOFF. And when the savings and loan was taken over by the RTC, the RTC essentially became the owner of the client?

Mr. MASSEY. That's a fair—in my understanding, that's a fair statement. It's not my area, but it sounds right.

Mr. CHERTOFF. Is it fair for me to say that in addition to the feeling you had from the standpoint of the law firm, that law firm files shouldn't go outside the law firm. You also had an understanding that files belonging to a client should not be disseminated or should not be transferred out of the firm without the client's permission?

Mr. MASSEY. Well, I take files to my house to work on them. You mean without—

Mr. CHERTOFF. I don't mean physically out of the building. I mean, out of your custody as a law firm.

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. You can take them home or to the beach but you're not supposed to transfer them to another organization without the client's permission?

Mr. MASSEY. That's right.

Mr. CHERTOFF. So Mr. Foster never said to you or indicated to you that these files that came out of your personal files were going to be taken anywhere outside of the firm?

Mr. MASSEY. No, sir. Again, he never indicated to me that he was going to give them to the campaign or to any third party.

Mr. CHERTOFF. And had he indicated he was going to do that, you would have refused to give him the files?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. When was the first time you learned that your files did wind up in hands outside of the law firm?

Mr. MASSEY. I think the same time you did. I think I happened to be watching the hearings the day that we learned about that small set of files.

Mr. CHERTOFF. So that was within the last, I guess, couple of months?

Mr. MASSEY. Yeah, and if you're going to ask me did I know anything about the Williams & Connolly—

Mr. CHERTOFF. I'm about to, but I'm going to put it up first. It is RS 381.

Mr. MASSEY. Yes, sir, I'm there.

Mr. CHERTOFF. Are these file folders with the files—and if you want to look at the files, actually, I have them here. Are these your files?

Mr. MASSEY. Sir, I don't know. I saw this letter during the hearings.

The CHAIRMAN. Why don't we have somebody bring this down, peruse them and see if they are the files.

Mr. MASSEY. Mr. Chertoff, are you asking me are they my files?

Mr. CHERTOFF. Are they copies of the files that you turned over to Vincent Foster?

Mr. MASSEY. Without saying that these are all of them, because, again, I've never seen this set—

Mr. CHERTOFF. I understand that. Let me be more precise. Are these documents at least portions of the documents that you turned over to Mr. Foster.

Senator SARBANES. Take your time, Mr. Massey.

Mr. MASSEY. I'm sorry?

Senator SARBANES. Take your time. Don't feel rushed.

Mr. MASSEY. I don't mean to take up all your time. I would like to answer your current question and also the one you asked me an hour ago.

Mr. CHERTOFF. Let's take the current question.

Mr. MASSEY. The current question is these appear to be without going through page by page, these appear to be the contents of my work files.

Mr. CHERTOFF. Is there something you want to supplement from earlier?

Mr. MASSEY. I mentioned to you earlier I had a recollection of a memo in which Davis Fitzhugh had approached Charles Handley and said—and asked him about the preferred stock and I told you I had read something about that. I have it. It is RS 000700.

That's the memo that mentions that Fitzhugh first approached the Securities Commission and asked them about the preferred stock issue. I digressed to the line of questioning we had earlier.

Mr. CHERTOFF. Is that the memo? It's a handwritten memo dated April 3, 1985?

Mr. MASSEY. Yes, sir. It says can a State-chartered S&L issue preferred stock.

Mr. CHERTOFF. A copy of this memo had been sent to Mr. Fitzhugh and he gave it to you?

Mr. MASSEY. I think so, yes. It looks like he got a copy of it and he brought it to me.

Mr. CHERTOFF. So you knew as of the time you began the assignment that Charles Handley was, in fact, the person to whom you needed to be in touch—

Mr. MASSEY. This refreshes my recollection.

Mr. CHERTOFF. That's correct, all right. Let's get back now to 1992. Having identified these files as being substantially what you had in your files, maybe some things more, maybe some things less, do you have any idea how these files came to be in the possession of Mr. Kendall, the President's—

Mr. MASSEY. I do not. I absolutely do not.

Mr. CHERTOFF. Did you know that Mr. Hubbell at a point in time had possession of these files?

Mr. MASSEY. Do I have any personal knowledge of that?

Mr. CHERTOFF. Right.

Mr. MASSEY. No.

Mr. CHERTOFF. Putting aside what you have learned, as we have, as we go along, did you have any idea before we started these hearings that Mr. Hubbell had these files in his house or in his basement when he was Associate Attorney General?

Mr. MASSEY. Absolutely not.

Mr. CHERTOFF. I have to ask you this, it's a little embarrassing but because of what's emerged, I think I'm obliged to do it. In fact, your law firm was in a substantial dispute with Mr. Hubbell in 1993 over his behavior as a partner?

Mr. MASSEY. That's putting it mildly.

Mr. CHERTOFF. And that ultimately led to Mr. Hubbell leaving—being convicted of a crime?

Mr. MASSEY. That was part of the dispute, yes, sir.

Mr. CHERTOFF. Am I correct in my understanding that you would have vigorously objected to Mr. Hubbell having possession of these documents of the firm when he was Associate Attorney General?

Mr. MASSEY. That's fair.

Mr. CHERTOFF. Do you know how long Mr. Foster kept custody of these documents?

Mr. MASSEY. Sir, the chain of custody outside of my hands, I have no knowledge of.

Mr. CHERTOFF. But what is clear is that, from your standpoint, you had authorized Mr. Foster to have these files only for purposes of serving the firm and only in the custody of the firm?

Mr. MASSEY. And I want you to know, I think I gave him copies. My files were copies. I don't think it's material. I think I gave him the copies as opposed to the originals, but yes, when I let him go, if you want to describe it in terms of a bailment, in my mind, they were for the firm.

Senator SARBANES. The question was whether you authorized him only for that purpose—

Mr. MASSEY. There was no authority.

Senator SARBANES. —and as I understand your answer, you made no authority. You made an assumption as to why he was receiving the files; is that correct?

Mr. MASSEY. Yes, sir, that's correct. We did not have a discussion about you can only use them for these purposes.

Mr. CHERTOFF. He told you that he was using these for purposes of the Rose Law Firm handling its own defense, as it were?

Mr. MASSEY. The phrase that comes to mind is firm stories, putting together a firm story.

Mr. CHERTOFF. Did he ever come back to you—did Mr. Foster ever come back to you and say we want to use these files for the campaign or for any other purpose?

Mr. MASSEY. No.

Mr. CHERTOFF. Did Mr. Hubbell ever—

Mr. MASSEY. No.

Mr. CHERTOFF. Did anybody else working on the campaign come to you and say we want to use these for any other purpose?

Mr. MASSEY. No, sir, I don't believe so.

Mr. CHERTOFF. No further questions, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, let's go back into this sort of new area that has come up about what occurred back in 1992 with respect to these documents. There had been allegations in 1992 that the firm and/or its partners had done something inappropriate in connection with the representation of Madison Bank; is that correct?

Mr. MASSEY. That was one of many, yes, sir.

Mr. BEN-VENISTE. I notice you're looking at your watch. We've all gone a long while without eating or possibly other requirements of the human body.

Mr. MASSEY. Many of my friends will doubt that I've been able to sit still for 5 hours.

Mr. BEN-VENISTE. If you need a break, let us know, but I think we're close to wrapping up on this line, but this is not meant to be torture for anybody.

At the time these issues came up, Mr. Massey, did you think it not unreasonable for the firm and its partners involved in these transactions to review the records, and to try to go back now 7 years, to determine what the facts were?

Mr. MASSEY. Absolutely.

Mr. BEN-VENISTE. Very reasonable?

Mr. MASSEY. I was glad—my reaction when he asked, I was glad he took the initiative to do it.

Mr. BEN-VENISTE. Even 7 years after. It's now 10 or 11, but 7 years was a long time to try to recall, without looking at the records, what had occurred; correct?

Mr. MASSEY. Seven years is a long time.

Mr. BEN-VENISTE. So now Mr. Foster asked you, because there had been some urgent press inquiry, to get what information you could to him so that could be part of the process; is that right?

Mr. MASSEY. That was the—that's a bit different than my characterization, but that's more or less true. As I told you, he came to me and said I'm putting together a firm story and I want your work files. That was the general reaction. That was a general statement.

Mr. BEN-VENISTE. Now, he came to you on one day and then the next day, he came in the morning, I take it——

Mr. MASSEY. And I said OK, I'll put them together and you come get them the next day.

Mr. BEN-VENISTE. In the interim between the time he made the request of you and the time he came back, you hadn't either begun or at least concluded copying the files; is that right?

Mr. MASSEY. That's correct.

Mr. BEN-VENISTE. You told him well, I haven't gotten to it yet, in substance?

Mr. MASSEY. I said——

Mr. BEN-VENISTE. You said I've been very busy, I haven't gotten to it. And he seemed to be frustrated with that response because clearly he was interested in resolving these questions as soon as he could?

Mr. MASSEY. I don't know. Again, I'm trying not to testify as to what was in somebody else's mind.

Mr. BEN-VENISTE. Right, but it didn't strike you as unreasonable, did it, that given the level of interest that had been expressed in these matters, he'd want to get on the situation as soon as possible and be able to get all the facts accumulated?

Mr. MASSEY. That is one interpretation of his behavior, sir. I'm trying not to—I'm trying to use objective facts.

Mr. BEN-VENISTE. You are not suggesting here, are you, because we're dancing around this implication, that Mr. Foster was in some process to try to get the original files of the firm into somebody's hands so they could be destroyed? Was that the impression that you got?

Mr. MASSEY. Absolutely not. That was not my impression.

Mr. BEN-VENISTE. Because that seems to be the implication of some of the questions and you may not perceive that sitting down there but——

Mr. MASSEY. I don't perceive that.

Mr. BEN-VENISTE. —we'll see that sliced and diced and appearing in the newspaper in some other context tomorrow unless we are very clear about it, so I want to make it very clear in my question to you as to whether you took Mr. Foster's request to you as implying that something untoward or improper was about to happen to these files?

Mr. MASSEY. I told you, again as I said earlier, my impression was he was putting together a—I have no reason to disbelieve him, he was putting a firm story together.

Mr. BEN-VENISTE. Now, in point of fact, Mr. Foster knew that you had made a copy of all of your materials at the time that you gave him the copy because you told him that?

Mr. MASSEY. Yes.

Mr. BEN-VENISTE. Going to the substance of the documents themselves, and we heard some testimony about this when this erupted the last time, when this was a smoking gun issue as to original files from the Rose Law Firm spirited away and possibly damaging information for the purpose of making sure that they would never see the light of day. If we go back and look at that, number one, they weren't the original files; correct?

Mr. MASSEY. Whatever was in our files was copies, so the original correspondence and so forth were—

Mr. BEN-VENISTE. Second, with respect to the documents that were in your files, did they reflect in any way, shape or form, Mr. Massey, any improper or untoward, much less illegal, conduct?

Mr. MASSEY. We did nothing wrong in connection with the matters on which I worked, and there was nothing untoward in those files. I told you, everything—you can be your own judge—everything in my files has been produced.

Mr. BEN-VENISTE. Finally—and I guess at some point we're going to conclude with your testimony. At some point these files came into the possession of Mr. Hubbell. Now, in terms of the time records or the original bills that went to the Madison Bank, is it your understanding that, apart from the records that have just been discovered and made available to this Committee, that is the computer generated time records reflecting work done for Madison, that there were bills sent to Madison by the Rose Law Firm that reflected, in substantial substance, the same work which is reflected in the detailed billing records?

Mr. MASSEY. The bills that I've seen seem to do that. Now there are some blocked bills, there are some itemized bills. And substantial, again, we've talked about that through the day, is in the eye of the beholder. I'd say they generally reflect the entries and they would have been sent to Madison.

Mr. BEN-VENISTE. So now the issue again is—and we need to be very careful in asking the question so that those who will interpret this or report on it are clear in their thinking—it is the case that the same material that was contained in the detailed time records has been made available to the Independent Counsel so far as your partners were aware; is that correct, sir?

Mr. MASSEY. Can you repeat that? I'm not sure if I followed it.

Mr. BEN-VENISTE. It is a convoluted question with a lot of prefatory language that could be dropped.

Mr. MASSEY. I have been here a long time. Those are the kind I can't answer.

Mr. BEN-VENISTE. Were you aware, as a result of conversations with your partners who have been questioned by many regulators and agencies over the years about these matters, were you aware that the bills that were sent to Madison Bank, which cover the same ground as these detailed computer generated records, had been presented to the Independent Counsel's Office?

Mr. MASSEY. May I talk to my counsel a second?

Mr. BEN-VENISTE. Certainly.

Mr. MASSEY. Excuse me.

[Witness conferred with counsel.]

Mr. MASSEY. I wanted to make sure I'm not stepping on anybody's toes. It is my understanding that the Independent Counsel has copies of the bills.

Mr. BEN-VENISTE. Of the bills that went to Madison?

Mr. MASSEY. Yes. I don't know about all of them. I think I was asked that earlier.

Mr. BEN-VENISTE. We don't know either because we don't receive information back from Independent Counsel about what they have. But in terms of any notion that there has been some destruction

of records so that we can't tell what was done for Madison, clearly those records were presented, at least in substantial part as far as you know, to the Independent Counsel and now we have another way of looking at the time that was spent as a result of the computer generated records that have been located by the White House and turned over to this Committee; correct? We have those records now; correct?

Mr. MASSEY. I can speak with personal certainty with respect to my records.

Mr. BEN-VENISTE. OK, and you have seen the records that have been recently located and turned over to this Committee, and they appear to be a computer generated record of time spent by attorneys at the Rose Law Firm back in 1985?

Mr. MASSEY. That's correct.

Mr. BEN-VENISTE. If you look at those records, there is a top sheet to the records that reflects that it was generated in summary form in 1992, February; is that correct?

Mr. MASSEY. 2/12/92.

Mr. BEN-VENISTE. And that would have been around the time, would it not, that this issue heated up during the campaign?

Mr. MASSEY. That's my recollection.

Mr. BEN-VENISTE. So it would be a fair inference, would it not, that somebody went to the Rose Law Firm computer to generate the information so that they would get on top of this situation in 1992?

Mr. MASSEY. That's what it appeared to me——

Mr. BEN-VENISTE. Now let's go to the underlying records. Can you tell when those records were generated?

Mr. MASSEY. "Underlying," you mean the actual bills?

Mr. BEN-VENISTE. Not only the actual bills but the actual time records.

Mr. MASSEY. The time entries, the time summaries?

Mr. BEN-VENISTE. Yes.

Mr. MASSEY. They appear to have been generated sometime around the time the bills were sent or the time was collated, I guess is the right word.

Mr. BEN-VENISTE. That would have been in 1985 and 1986.

Mr. MASSEY. There is an 1981 bill in here from the Bank of Kingston. Yeah. They seem to—again, without—very generally, they seem to have come from a time in which they were rendered.

Mr. BEN-VENISTE. Now, you say you haven't had the opportunity to compare the billing summaries which were prepared by the managing partner and the underlying time records. We have done that and found that they are substantially—we haven't gone word for word, but they are substantially identical, that the work reflected was, in fact, reflected in the underlying time records.

Without going through this in excruciating detail to show that that's the case, I wonder whether we can at least get the confirmation from Mr. Clark that that process has gone forward and that our observations are substantially the case. If you wish to consult, you may do so with the Chairman's——

The CHAIRMAN. Mr. Ben-Veniste, if you are indicating that the Committee staff has reviewed them and found them to be substantially the same, that's good enough. We'll accept that.

Mr. BEN-VENISTE. We're not the witnesses.

Mr. MASSEY. Yes, sir, that's my understanding. I haven't done it myself, but in my understanding, that's correct.

Mr. BEN-VENISTE. Mr. Chairman, I understand that in view of the impending next blizzard—

Senator DODD. You're talking about the weather now, aren't you?

Mr. BEN-VENISTE. Yes, the weather, that blizzard, yes, which is scheduled to bury Quebec Street beyond recognition since it hasn't been plowed, Mr. Mayor, if you're listening, up to this point. But as a serious matter, these gentlemen have plans to go back to Little Rock and probably not have plans to stay over this weekend and have now—

Mr. MASSEY. I'm happy to stay as long as you have questions.

Mr. BEN-VENISTE. I'd ask for our indulgence—

The CHAIRMAN. I think we have several more questions for Mr. Massey, and then we can conclude. Of course, if you want to say anything else.

Mr. CHERTOFF. Mr. Massey, I want to address this issue that we have just talked about regarding the billing records. What you have just talked about was a fee recap prepared by your law firm; correct?

Mr. MASSEY. Sir, you're asking about 013, RLF 03030?

Mr. CHERTOFF. The document that was just addressed. That's a summary of the bills that were sent out to Madison.

Mr. MASSEY. I didn't prepare it. I wish I could tell you what that is. It appears to be a summary of allocations. I'm not sure it's a summary of time.

Mr. CHERTOFF. Allocations means allocations on a monetary basis?

Mr. MASSEY. I'm getting beyond my knowledge.

Mr. CHERTOFF. Now, you don't really know what bills Independent Counsel has; right?

Mr. MASSEY. I do not.

Mr. CHERTOFF. Have you seen any bills that anybody else has at the Independent Counsel's Office?

Mr. MASSEY. I don't think so personally.

Mr. CHERTOFF. Have you been informed since this matter has been opened up that people at your law firm have been shown some bills by the Independent Counsel?

Mr. MASSEY. Yes.

Mr. CHERTOFF. You don't know what the bills are?

Mr. MASSEY. I have some general idea, but I don't know what all of them are.

Mr. CHERTOFF. You don't know if they have been shown all the bills?

Mr. MASSEY. No, sir. As I said earlier, I do not know.

Mr. CHERTOFF. Do you know where the Independent Counsel got the bills?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. They didn't get them from the Rose Law Firm, did they?

Mr. MASSEY. If they are there, they can get them, but I'm not sure where they got them.

Mr. CHERTOFF. But they did not get them from the Rose Law Firm, did they?

Mr. MASSEY. I don't think so.

Mr. CHERTOFF. Now this is important because even assuming the Independent Counsel has bills, when we're talking about bills, we're talking about the bills that went out to Madison, there is information on the printout, Mr. Massey, that is not contained on the bills; isn't that correct?

Mr. MASSEY. On the printout?

Mr. CHERTOFF. Yes. If you compare the bills——

Mr. MASSEY. The fee recap of 1992?

Mr. CHERTOFF. No. If you compare the package of bills we have put before you, which we have been working with all day, which lists dates and then who does work and what the work is done on each date, if you compare those to the printout, the printout contains the exact time, amount of time worked on each matter, the bill doesn't tell us that, does it? Do you want to do a comparison here?

Mr. MASSEY. Well, I think you could probably do the math.

Mr. CHERTOFF. Let's do a comparison. DKS 28934, which is the April bill.

Mr. MASSEY. Mr. Chertoff, I'm going to tell you, I'm happy to work with you on these, but we're dangling on the outside of my area of expertise.

Mr. CHERTOFF. This is just a question, Mr. Massey, of reading two things and comparing.

Mr. MASSEY. Sure, OK.

Mr. CHERTOFF. The bill, 28934, some of which you believe the Independent Counsel may have, shows the names of individuals and shows the work they do; right?

Mr. MASSEY. Excuse me, just excuse me. You're looking at the billing—your question was?

Mr. CHERTOFF. Bill DKS 28934, part of that package of bills that we've been working with.

Mr. MASSEY. Bear with me.

Mr. CHERTOFF. Containing your work in April 1985.

Mr. MASSEY. Sure. We have 5/21/85 on there. The one I have is not stamped.

The CHAIRMAN. She is going to give this to you right now, Mr. Massey, or to your counsel.

Mr. MASSEY. I do have it now, excuse me.

Mr. CHERTOFF. However many of these bills the Independent Counsel has, these bills do not indicate the amount of time an attorney spent on each task; is that correct?

Mr. MASSEY. The bill what I'm looking at, 28934, does not reflect time values.

Mr. CHERTOFF. It just gives a dollar value for the bill and a list of tasks; correct?

Mr. MASSEY. It gives a total amount and list of tasks, yes, sir.

Mr. CHERTOFF. Now the printout, you have no reason to believe the Independent Counsel ever had the printout?

Mr. MASSEY. Sir, I don't know what they have.

Mr. CHERTOFF. The printout contains the actual amount of time spent on each task; isn't that correct?

Mr. MASSEY. Yes, sir.

Mr. CHERTOFF. So there's information on the printouts that is critical to understanding who did what and how much time they spent on it that you can't determine if you just get the bills that went to Madison; isn't that correct?

Mr. MASSEY. If you were—to put it in my own words, if I can, if you wanted to quantify the time spent on matter 1 for the month of April, you couldn't tell from the bill.

The CHAIRMAN. Who did the work?

Mr. MASSEY. Well, you could see entries that reflect some efforts.

The CHAIRMAN. But it doesn't tell you which attorneys?

Mr. MASSEY. It tells you two. It doesn't tell you how much time they spent.

Mr. CHERTOFF. To know how much time is spent you have to get those printouts; right?

Mr. MASSEY. That's correct.

Mr. CHERTOFF. Those printouts were printed out in February 1992, as Mr. Ben-Veniste asked you?

Mr. MASSEY. I'm confused. Can you repeat your—

Mr. CHERTOFF. The printouts, Mr. Ben-Veniste asked you a few moments ago, the printouts were printed out along the top, they were run and printed out in February 1992; is that correct?

Mr. MASSEY. The very—the top printout, the summary. Now this printout that follows the bill was printed out apparently in 1985.

Mr. CHERTOFF. No, no, the printouts that Mr. Ben-Veniste asked you about were run off the firm computer in February 1992; is that correct?

Mr. MASSEY. I would prefer, before I testify, that we identify the documents.

Mr. CHERTOFF. Let me ask you this. Let me—

Mr. MASSEY. It appears to have been printed out February 1992. DKS 028928.

Mr. CHERTOFF. 28929?

Mr. MASSEY. 28928, 28929—

Mr. CHERTOFF. Fine. These printouts were generated on February 12, 1992; correct?

Senator DODD. That's the summary.

Mr. CHERTOFF. Right.

Mr. MASSEY. No, no, sir. It's not the summary. I want to identify the document so that we're not confused. So that I'm not confused, anyway. I'm talking about DKS 028928. It is a fee client billing and payment history that appears to have been printed out at 8:41, I assume a.m. on 2/12/92.

Mr. CHERTOFF. OK. And you were asked by Mr. Ben-Veniste whether that was when all these newspaper articles started to appear about Madison and the Rose Law Firm. Isn't it a fact that the—to your knowledge, and I'm obviously not going beyond the limits of your knowledge, didn't these articles actually start to appear somewhat later than the middle of February 1992?

Mr. MASSEY. My recollection was later, yeah, mid-February, something like that.

Mr. CHERTOFF. Later than that?

Mr. MASSEY. Sir, I don't—there are a lot of articles.

Mr. CHERTOFF. Mr. Foster came to you and asked you for your files—you have to pay attention to me, Mr. Massey. Mr. Foster came to you and asked you for your files to prepare—to respond on behalf of the Rose Law Firm to these press inquiries. Did he ever come back to you and ask you for your recollection of what had happened or to explain to him what was in the files?

Mr. MASSEY. No, sir.

Mr. CHERTOFF. Now finally, let me just—I want to make sure that there's no dispute on the record about this, because I will tell you, Mr. Massey, in many ways this is probably the most important question we've addressed in your examination, and I don't want to sugarcoat it.

We have two documents, one of which is a sworn document, one of which is an unsworn document but still under color of law, provided by Mrs. Clinton, her answers with respect to how this work came in, and you understand, Mr. Massey, we have Mr. McDougal making a public statement to the press that he gave the work to the firm as a benefit to the Clintons, Mr. Latham indicated that the work came over to the firm because it was McDougal's decision to do something for his friends.

You have seen what Mrs. Clinton's version is, but I want to focus your attention very specifically on some things, and I want you to bear in mind in answering the question that there are certain things which are memorable but certain things are quite memorable in an attorney's career and in terms of what an attorney does.

I want to ask you this in respect to the statement in Mrs. Clinton's interview that she recalled Massey came to her and asked her to be the billing attorney, which was a normal practice when an associate was handling a matter. Did you go to Hillary Clinton in April 1985, or before or afterwards and ask her to be the billing attorney on the Madison matter that you were working on?

Mr. MASSEY. I told you before, I don't believe I did. I have no recollection of that.

Mr. CHERTOFF. And it's something you would recall if you did?

Mr. MASSEY. My brain works in funny ways, Mr. Chertoff. I think I would recall it.

Mr. CHERTOFF. I want to go to the sworn statement. The sworn statement says, "In the spring of 1985 Massey came to see me," "me" being Hillary Clinton, "because he had learned that certain lawyers at the law firm were opposed to doing any more work for McDougal or any of his companies until he paid his bill and then only if Madison Guaranty agreed to prepay a certain sum to the firm once a month to cover fees and expenses." Did you do that?

Mr. MASSEY. You asked me earlier the best question, the precise question, which was did I go to her with a proposal, and I don't remember anything like that.

Mr. CHERTOFF. I will read it to you again. "I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him." Did you go to Mrs. Clinton about presenting this proposal to do work for the Rose Law Firm to Jim McDougal?

Mr. MASSEY. I am going to tell you what I said earlier, which is I could have had a conversation with her of this substance. I had

talked to Latham, he said it is up to McDougal to get the work. Would you chat with McDougal. That's possible. Now, specifically with respect to that, did I go with a proposal and ask her to be the billing attorney? I don't believe so.

Mr. CHERTOFF. And that's because Latham didn't even have the authority to enter into an agreement with you about Rose Law representing Madison?

Mr. MASSEY. Well, and in light of the statements that I have read today.

Mr. CHERTOFF. The fact of the matter is, to kind of cut it down to the most common sense issue, you did not reach an agreement with John Latham to have the Rose Law Firm represent Madison Guaranty Savings & Loan in any matter?

Mr. MASSEY. That's broader than I think I'm prepared to testify.

Mr. CHERTOFF. Now please listen again. You did not reach an agreement—

Mr. MASSEY. An agreement, what is that?

Mr. CHERTOFF. Yes. You did not reach an agreement with John Latham that the Rose Law Firm would represent Madison Guaranty Savings & Loan in any matter; is that correct?

Mr. MASSEY. Again, I want to answer your question, but that's a very broad statement. I agreed to perform services for Madison, OK, and I agreed to do certain things, and that—is that a contract? Is that an agreement?

Mr. CHERTOFF. I don't mean when you started to work on it after the firm was retained.

Mr. MASSEY. I understand.

Mr. CHERTOFF. You did not reach an agreement to have the firm retained, have the Rose Law Firm retained by Madison Guaranty with John Latham; correct?

Mr. MASSEY. No, sir, I don't believe so.

Mr. CHERTOFF. Therefore, you were not able to bring any such agreement in to Mrs. Clinton to have the fee arrangements?

Mr. MASSEY. I don't have any recollection of that, yes—

The CHAIRMAN. Mr. Massey, let me say something to you. You were there, a first-year associate, if you had brought in this business, it would have been the first piece of business I think you testified that you brought into the firm; right?

Mr. MASSEY. That's correct.

The CHAIRMAN. You would have remembered that?

Mr. MASSEY. That's correct.

The CHAIRMAN. You don't remember bringing that business into the firm?

Mr. MASSEY. No, sir, I do not.

Mr. CHERTOFF. Nothing further, Mr. Chairman.

Senator SARBANES. Now, Mr. Massey, as I understand your testimony, you talked to Latham about getting business into the Rose Firm from Madison; correct? Because Latham had been asking you lots of questions about securities matters, and I think you testified here somewhere that Rose was you thought the best regional securities law firm?

Mr. MASSEY. We were one of the best around.

Senator SARBANES. Yes. So you talked to Latham about that?

Mr. MASSEY. Sure.

Senator SARBANES. Mr. Latham then told you look, I can't decide that, McDougal decides that?

Mr. MASSEY. That's what he told me, yes, sir.

Senator SARBANES. You say you may have said to Mrs. Clinton in effect here is a chance to get some business but we need to, as it were, kick it upstairs in order to get the business; is that correct?

Mr. MASSEY. That's possible, yes, sir.

Senator SARBANES. It's possible that you did that?

Mr. MASSEY. Yes.

Senator SARBANES. So the statement that Massey approached me about this proposal, and I don't know what the proposal is, but—

Mr. MASSEY. Mr. Chertoff, I think, is trying to distinguish between did I talk to her with respect to how we were going to bill them, whether we get a retainer, did I have a specific engagement agreement of some kind. Sir, I don't have any recollection of that happening. I don't believe it happened that way. Could I have had a conversation with her, can you have a talk with Mr. McDougal, that's very possible. I want to—that's my testimony.

Senator SARBANES. So the issue really comes down to whether the use of this language "this proposal," whether it reflected some fully developed proposal or whether the reference is to trying to get the business? And in any event—

Mr. MASSEY. I don't know what she meant when she said that.

Senator SARBANES. In any event, either way, I don't see where it's a highly relevant point, to be very candid with you. As I understand your testimony here today, though, is you tried to get the business out of Latham and you may have gone to Mrs. Clinton to try to—for her, saying that this is in the offing, we could get this business, but it needs somehow to be brought to closure. Now, you say such a conversation could have happened; is that correct?

Mr. MASSEY. Could have.

Senator DODD. If my colleague would yield, we are using the word "proposal," and I think to the average person a proposal sounds like something more formal.

Mr. CHERTOFF. It's actually in Mrs. Clinton's sworn statement.

Senator DODD. I know she used the word "proposal," and I am not arguing about the use of the word, but I think how people interpret the word, and if you hear the word "proposal," it has a note of formality to it, a proposal does. I think what some people are suggesting or at least implying, what you have testified to, Mr. Massey, is this wasn't—you don't recall any formal discussion along these lines?

Mr. MASSEY. Yes, sir. No engagement letter, no engagement agreement.

Senator DODD. Which would be normal in a formal proposal. That's how it would be done?

Mr. MASSEY. Mr. Chertoff asked me did I go to her with a proposal in hand, which I think he read to me from a deposition. My interpretation is something that is specific with respect to what we're going to do and how we're going to bill them and how the engagement is going to operate. That is—when I testified that I don't believe it happened that way, that's what I'm saying. I don't recall that—I don't believe that happened.

Senator DODD. I understand. I appreciate that. And yet if the question is framed with the notion did you go to Mrs. Clinton and say I've talked to Latham, Latham thinks that we can have this business, but it isn't his decision to make, it's McDougal's decision to make, now, that's a different proposal and one that you don't have a recollection of, but you're not denying that it occurred?

Mr. MASSEY. I'm not saying that didn't happen. That's up to you all to decide whether it's a proposal.

Senator DODD. I understand.

Senator SARBANES. Mrs. Clinton actually said, "As I recall, McDougal agreed that Massey could proceed with the work and informed me he would arrange to pay the past due bill." And shortly thereafter you did proceed with the work, did you not?

Mr. MASSEY. I'm not sure the gap of time between when we were engaged and when I started with the work. It looks like by the time records that we were engaged and I started working pretty quickly with one another.

Senator SARBANES. Let me ask you this question. You are now a partner and you supervise associates; correct?

Mr. MASSEY. I do.

Senator SARBANES. You review their work and then you bill for the review, of course the associate who does really most of the work also bills for his work; right?

Mr. MASSEY. Yes.

Senator SARBANES. Would you in some instances, when someone said to you, well, you really did a good job on that, say well, the associate here did all the work? Have you done that on occasion, even though you reviewed his work, but it's basically the associate did all the substantive work. You reviewed it, you're entitled to bill for that review and so forth, but have you done that on occasion?

Mr. MASSEY. Some associates would probably argue with me on that, but on occasion I probably have given associates credit where credit is due.

Senator SARBANES. That's right. Mrs. Clinton may have done that in this instance to you in terms of your work?

Mr. MASSEY. It's possible.

Senator SARBANES. Thank you very much.

The CHAIRMAN. I think Senator Bennett has a question.

Senator BENNETT. Obviously I don't want to prolong this, but one quick question, going back to our earlier exchange, which may now be so long ago that you don't recall it, but—

Mr. MASSEY. At least it's not 11 years, Senator.

Senator BENNETT. No, it is not. I must say I am impressed with your memory. I find it—

Mr. MASSEY. I have nothing to hide. I have a very good memory.

Senator BENNETT. You made the comment that only the client knows ultimately why he hired the law firm, and I read to you what Mr. McDougal has said publicly. My question is this: Without making a judgment as to whether McDougal is right or the President is right in his denial of McDougal, is there anything in the McDougal description of how he decided to hire the Rose Law Firm for this purpose that is contradictory to your experience?

Mr. MASSEY. Sir, you mean you're asking me to comment on the so-called joggling story?

Senator BENNETT. McDougal—forgetting the sweating and the leather chair, McDougal says he hired the Rose Law Firm because Governor Clinton asked him to. Do you have any experience—

Mr. MASSEY. I can't contradict. I have no idea and I have no experience.

Senator BENNETT. You have no way of corroborating that?

Mr. MASSEY. No, sir.

Senator BENNETT. But your experience of the way the thing was announced within the firm, nothing would come up that would deny that either?

Mr. MASSEY. Sir, I don't recall how it was announced within the firm. Typically the announcement is just a pink sheet, a piece of paper. So guns didn't go off and I don't remember there being a general discussion.

Senator BENNETT. But there was nothing in a conversation you had with Mr. Latham or anybody else that would be mutually exclusive with the McDougal description?

Mr. MASSEY. I can't help you one way or another with that story, Senator Bennett.

Senator BENNETT. Thank you.

That's all, Mr. Chairman.

The CHAIRMAN. At some point in time you were called in and you had a meeting with some of the people at the bank, one of them you knew and one of them had been a student of yours, et cetera. Now you're at the law firm. Who called you in?

Mr. MASSEY. Who called me in?

The CHAIRMAN. Who said to you, Mr. Massey, we have this proposal to work on. Who called you in, do you recall?

Mr. MASSEY. I don't. I've been asked that question a lot of times.

The CHAIRMAN. You don't recall if Mrs. Clinton called you in?

Mr. MASSEY. I tell you this, I know I had a meeting with her very early in the engagement.

The CHAIRMAN. You didn't meet with any of the other senior partners, did you?

Mr. MASSEY. Sir, are you asking me did she call me, did I attend a meeting in which she was there?

The CHAIRMAN. Yes.

Mr. MASSEY. It appears I met with her. Did we have a meeting that she told me the work is here? It's possible.

The CHAIRMAN. Did she assign the work?

Mr. MASSEY. It's possible.

The CHAIRMAN. The billing records indicate she had done some work initially before you got started?

Mr. MASSEY. Same day, I think.

The CHAIRMAN. Same day, contemporaneously. If you had brought the client in, you would know that you brought the client in, we went over that. First-year associate, 8 months, you would have known that, it would have been memorable, wouldn't it? Yes or no?

Mr. MASSEY. Yes.

The CHAIRMAN. Mr. Massey, this isn't easy for us and it must be extraordinarily difficult for you, given the totality of your circumstances in terms of where you work and your relationship with your fellow associates. I want to thank you for your candor and

being as honest as possible. Some of us have different interpretations. Some will speculate about what certain people were thinking, but you can't testify to people's state of mind, so that really places you in a difficult position. So you certainly handled yourself well, and I certainly want to thank you for your cooperation.

Senator Sarbanes, if you have anything?

Senator SARBANES. Mr. Chairman, just let me observe that the report of the Pillsbury Madison & Sutro on this retainer, and the suggestion that the retainer was paid because the Clintons wanted the money rather than for services rendered, and the report then refutes that assertion. I mean this is the McDougal story about Clinton, and it goes on and sets out three reasons why this suggestion would be wrong. They analyze it as an advance fee payment if services were rendered, that the unused portion was returned, as I understand it, from the law firm to McDougal, and third, that in light of the failure for them to have paid previous bills, they could hardly be blamed for seeking advance payments for agreeing to represent McDougal once again. But this report, I gather, has now been released and is now publicly available. This is the one I think that cost what \$4 million to the RTC to have done?

The CHAIRMAN. I think we overpaid them.

Senator SARBANES. Actually it addresses a preferred stock offering on the brokerage work which Mr. Massey has been talking about here today.

Senator DODD. If my colleague would yield on that, let me tell you, if this report that they spent 2 years on at the cost of \$4 million had reached a different conclusion, we would be gagging on it, it would have been literally disseminated everywhere. That's the point here.

Here is a report that exonerates them at least on the civil side of this, and it is sort of buried away instead of trying to get it out. That's the difference here. That's why I raised the issue earlier. I mean, we all know as a matter of fact, had that firm, the Stevens' firm, charged the Clintons with illegality in these areas, this would have been absolutely everywhere in the country, all over the place. The fact that it exonerates them, we don't hear about it. That's the concern.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Just one last point which seems obvious to me. How many people were in the securities area of your firm back at the time this matter came in?

Mr. MASSEY. People—lawyers?

Mr. BEN-VENISTE. Yes.

Mr. MASSEY. Associates, partners—

Mr. BEN-VENISTE. Partners and associates.

Mr. MASSEY. Bear with me—12 to 15.

Mr. BEN-VENISTE. Twelve to 15 and you were more or less at the bottom of the food chain?

Mr. MASSEY. Absolutely.

Mr. BEN-VENISTE. Yet when the matter came in, there wasn't any question but that it was going to be Rich Massey who was going to get this matter to work on; correct? So there can be no inference other than there was a direct relationship to the conversations that you had had with Latham, the fact that immediately you

go and you get guidance from one of the senior partners in your firm on the very first day that any work is done on this, correct, from Mr. Baledge, is it?

Mr. MASSEY. Baledge was a senior associate at the time.

Mr. BEN-VENISTE. Senior associate at the time, that you were going to get the responsibility for this matter from the securities group standpoint. That wasn't a coincidence in your mind, was it?

Mr. MASSEY. I'm sorry, I don't follow you.

Mr. BEN-VENISTE. You were assigned to the case, even though you were at the bottom of the food chain in the securities department; correct? It isn't as though—

Mr. MASSEY. I was assigned because I was at the bottom of the food chain? I'm sorry—

Mr. BEN-VENISTE. No. It isn't as though this was the luck of the draw, some lottery, the Rose Law Firm lands a new client, Madison Bank, and they say let's spin the wheel and see which person of the dozen in the securities department gets assigned this matter. Quite clearly, it went immediately to you.

Mr. MASSEY. I'm just going to say that Latham, which this is the first time I saw this testimony, he said he asked for me.

Mr. BEN-VENISTE. And quite clearly all of this came together on the basis of the fact that you had pitched Latham for the business, Mrs. Clinton had had the relationship with McDougal and the case came in and you were assigned to do the work? Fair?

The CHAIRMAN. Don't open that door. He has already answered that question. The record is pretty clear, Counselor, as it relates to his answers.

Mr. BEN-VENISTE. Don't answer my question.

The CHAIRMAN. Well, if you assume that we will go right back and ask again to look—

Mr. MASSEY. Would you repeat the question?

Mr. BEN-VENISTE. Isn't it a fair conclusion to reach that on the basis of your relationship with Mr. Latham and the free advice that you had given him before, the fact that you pitched Mr. Latham for the business on behalf of the Rose Firm, the fact that Latham said he didn't have the relationship with Mr. McDougal—that he did not have the decisionmaking authority, that that was Mr. McDougal's bailiwick, that you knew that Mrs. Clinton had an acquaintance with Mr. McDougal, given all of those circumstances, isn't it a fair conclusion that this was a team effort to bring a new client into the firm in which you played a not insignificant role?

Mr. MASSEY. "Team effort" meaning there was more than one person trying to get the work?

Mr. BEN-VENISTE. Yes.

Mr. MASSEY. Sure.

Mr. BEN-VENISTE. Nothing further.

Mr. MASSEY. I have testified that I pitched the business, and—so I can answer the question. I testified that I pitched the business, so I guess if Mrs. Clinton asked for the business and I asked for the business, that's a team effort.

Mr. BEN-VENISTE. There you go.

Mr. MASSEY. That's your definition. That's fine.

The CHAIRMAN. We're not going to pursue that any further, and again Mr. Massey, I want to thank you for your candor. The Com-

mittee will have to hear the testimony of others, and then consider all the testimony. You must listen to all the other testimony in order to make those judgments. I'm not going to ask you to make that judgment.

I thank my colleagues. Mr. Clark, we will try to accommodate your schedule, as well as the Committee's to give you an opportunity to testify. We will work with the Minority. I don't think the Minority wants to break now and then come to you but we are certainly willing to receive your testimony.

Senator SARBANES. Mr. Chairman, we understand these folks need to catch a plane, otherwise they run the risk of being snowed in given the weather forecast, and we have gone much, much longer than I ever anticipated. We do want Mr. Clark here.

The CHAIRMAN. I agree.

Senator SARBANES. We will work with you to get him, I assume next week if possible.

The CHAIRMAN. If we can do it next week.

Senator SARBANES. I think his testimony is relevant and pertinent at this point in time.

The CHAIRMAN. Why don't we work it out with the Committee's schedule as well as Mr. Clark's so that he does not come next week and then the following week. There are several witnesses that we still want to examine so that when we do examine Mr. Clark, we can be as thorough and comprehensive as possible and complete it in one sitting, but I'll leave it to the Committee staff to work—

Senator SARBANES. I think we need to give some thought to it. I don't think we ought to have the situation in which we have a witness at the table who can't give an answer and a lot of to-do is made about the not being able to answer, when if Mr. Clark was here, he could provide the answer, in terms of an orderly process.

The CHAIRMAN. Let me simply say that the issues of most concern certainly were within Mr. Massey's but not Mr. Clark's knowledge, so Mr. Massey was the proper witness to examine, and that's why he was scheduled. He knows what he said, he knows what work he did, he knows how this work to the best of his ability came about, and he knows who brought the client in and who didn't. He testified to the best of his ability. I don't think Mr. Clark, unless he's going to tell us next week, will testify that he brought the client in or that he knows anything different. He certainly—

Mr. MASSEY. He better not, Mr. Chairman.

The CHAIRMAN. I didn't think he was going to, so that's why we tried to limit this particular panel. As I said, we would be willing to take a break and come back but obviously the weather is such that both Mr. Massey and Mr. Clark want to catch a plane and get out of here and not get snowed in, but we'll give you an opportunity and try to do it within your schedule, Mr. Clark.

Mr. CLARK. Senator D'Amato, I will say, I will certainly work with the Committee with my schedule. I was here for one reason and one reason only and that's because I am Chief Operating Officer of the Rose Law Firm and one of my partners was called to testify. I intend to be here when any one of my partners testify. I was not here to testify, I was here for Mr. Massey.

The CHAIRMAN. All right. Very good. That was our understanding. We did not know or think that there would be any need to go into anything that would be particularly within your knowledge.

Having said that, we will certainly look to those areas that we might be examining for you and the other members of the firm and we will try to work cooperatively with you so that we don't have you coming back and forth.

The Committee stands in recess.

Senator SARBANES. When will we meet again, Mr. Chairman?

The CHAIRMAN. Tuesday.

Senator SARBANES. What time?

The CHAIRMAN. At 10 a.m.

Senator SARBANES. And the panel?

The CHAIRMAN. Kennedy, Eggleston, and Lindsey.

Senator SARBANES. I understood you're going to have hearings on Wednesday and Thursday as well?

The CHAIRMAN. Thursday as well.

Senator SARBANES. Not Wednesday?

The CHAIRMAN. Thursday, Carolyn Huber.

Senator SARBANES. Could I suggest that Counsels meet, Mr. Chairman, to try to project forward the hearing schedules? I think we need to do some careful work on this.

The CHAIRMAN. I agree. We stand in recess.

[Whereupon, at 3:36 p.m., the hearing was recessed, to reconvene at 10 a.m., on Tuesday, January 16, 1996.]

[Appendix supplied for the record follows:]

CONFIDENTIAL

UNITED STATES OF AMERICA
 RESOLUTION TRUST CORPORATION
 WASHINGTON, D. C.

IN THE MATTER OF:

Madison Guaranty Savings
 & Loan Association (7236)
 McCrory, Arkansas

ORDER OF INVESTIGATION
 (Feb. 4, 1994)

INTERROGATORY RESPONSES OF
 HILLARY RODHAM CLINTON

Interrogatory No. 1: DESCRIBE each and every occasion
 before August 1978 on which YOU:

(a) Bought real estate;

In late 1976, my husband and I purchased a residence at 5419
 L Street in Little Rock, Arkansas.

(b) Obtained bank financing for a real estate acquisition;

My husband and I financed the 1976 purchase of our Little
 Rock home with a mortgage loan from Capital Savings & Loan
 Association of Little Rock.

(c) Sold real estate;

I can recall no such occasion prior to August, 1978.

(d) Invested in real estate (including any investments in
 corporations and partnerships that dealt primarily in real
 estate). In answering this interrogatory, be sure to DESCRIBE
 the real estate transactions referred to in documents DKRT900707,
 DKRT900715 and DKRT900716.¹

¹ For ease of reference, I attach to these interrogatory
 responses the documents which the RTC appended to its
 interrogatories. These documents are marked with tabs

DKSN000767

CONFIDENTIAL

Interrogatory No. 17: With respect to the Rose Law Firm's representation of MADISON GUARANTY in 1985 and 1986:

(a) ~~Was Mrs. Clinton the lawyer responsible for obtaining this business for the Rose Law Firm? If not, who was?~~

The Rose Law Firm had first represented Jim McDougal in about 1981 with respect to litigation arising out of his purchase of the Bank of Kingston. I did not work on the 1981 matter, but I recall that Jim disputed the amount of his final bill and refused to pay the entire amount requested.

To the best of my recollection, ~~the~~ president of Madison Guaranty, John Latham, who was a friend of an associate at the ~~Rose Law Firm~~, Richard Massey, became interested in having Madison Guaranty issue some kind of preferred stock to raise capital. Latham had spoken to Massey about doing the related legal work. In the spring of 1985, Massey came to see me because he had learned that certain lawyers at the law firm were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill and then only if Madison Guaranty agreed to prepay a certain sum to the firm once a month to cover fees and expenses. Under such an arrangement, the firm could be assured that Madison Guaranty was staying current with regard to paying for the new work that the firm might do for it.

I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him. I agreed to go see McDougal. I visited him at his office on April 23, 1985, and told him that I understood Latham wanted Massey to

DKSN000800

OFFICIAL RECORD OF INTERVIEW
OFFICE OF INVESTIGATIONS
OFFICE OF INSPECTOR GENERAL

CASE NUMBER: I094-096

PARTICIPANTS: [REDACTED], Senior Special Agent, FDIC OIG; [REDACTED] Senior Special Agent, FDIC OIG; Hillary Rodham Clinton; David E. Kendall, Esq.; Nicole Seligman, Esq.

DATE/TIME/LOCATION: November 10, 1994; 0930 to 1030; The Treaty Room, White House Residence, 1600 Pennsylvania Avenue, Washington, D. C.

INTERVIEW CONDUCTED: XXXX In Person By Phone

PURPOSE: To interview Mrs. Clinton regarding her former employment at the Rose Law Firm, Little Rock, Arkansas

RESULTS: The interview of Mrs. Clinton began after SSA [REDACTED] and [REDACTED] identified themselves orally and by displaying their credentials. At the outset of the interview, Mrs. Clinton declined to be placed under oath regarding the information to be discussed. It was also explained that the interview was intended to obtain clarification or supplemental information to a sworn affidavit Mrs. Clinton executed September 16, 1994. The affidavit was provided in response to a number of questions previously provided to Mrs. Clinton by the FDIC OIG.

Mrs. Clinton was asked when and under what circumstances she met Dan Lasater. Mrs. Clinton acknowledged having met Mr. Lasater on approximately two occasions but was uncertain as to the exact circumstances. She recalled that it may have been in conjunction with a school function involving her daughter Chelsea and one or more of Mr. Lasater's children who attended the same school in Little Rock. Mrs. Clinton indicated she had no professional or business relationship, including any legal representation at any time, of Mr. Lasater. She stated she had no way of knowing what, if any, relationship President Clinton may have or have had with Mr. Lasater.

Mrs. Clinton was asked regarding Mr. Lasater's private airplane and usage of that aircraft. She stated she never travelled on Mr. Lasater's airplane and had no knowledge of President Clinton having travelled on Mr. Lasater's plane. Mrs. Clinton was shown flight logs for Mr. Lasater's plane which included then Governor Clinton and others; Mrs. Clinton stated she had no collection of these trips. Mrs. Clinton also indicated she had no knowledge of Roger Clinton having travelled on Mr. Lasater's plane. Shown some of the passengers names, Mrs. Clinton identified Dick Kelley as the

husband of President Clinton's mother, Virginia Kelley; she also identified Linda Lasater as Dan Lasater's wife.

Mrs. Clinton indicated she had no knowledge or recollection regarding Mr. Lasater having sold his company in 1986 and did not recall having performed any legal work relating to the Lasater and Company lawsuit involving First American Savings and Loan. Specifically, she indicated having no recollection participating in the settlement negotiations related to this lawsuit or ever having discussed this matter with Mr. Lasater. She stated she never performed any legal services work for Mr. Lasater. Further, Mrs. Clinton indicated she did not ever discuss the lawsuit with anyone outside the RLF.

Mrs. Clinton was asked several questions related to the First American Savings and Loan Association v Lasater and Company suit which was filed in October 1985. Mrs. Clinton stated she had no recollection of that litigation but had been informed, probably by Mr. Kendall, that Vincent Foster handled the matter. Mrs. Clinton was shown a copy of the document and asked why she signed a pleading and a motion on behalf of Mr. Foster instead of Michael Bennett, an attorney who normally assisted Mr. Foster. Mrs. Clinton was uncertain as to why she signed the documents and did not even recall having done so but indicated it was normal RLF practice for a partner to sign such documents and Mr. Bennett was an Associate. Mrs. Clinton related she had no knowledge or recollection of the issue of an amended complaint or the original complaint and, accordingly, was unable to provide any information regarding these issues.

Mrs. Clinton stated she was unaware of any information regarding Mr. Lasater having sold his interest in Lasater and Company before the time she worked the two hours which were billed to the FSLIC. Further, in response to the question of whether Mr. Foster had done so, Mrs. Clinton stated she did not recall whether Mr. Foster circulated a memorandum to RLF attorneys querying the staff regarding possible conflicts of interest. She stated her opinion would be that whatever procedures were normally followed at the RLF were probably also followed in the First American matter which was principally handled by Mr. Foster.

Mrs. Clinton was asked to describe her relationship with Ms. Patsy Thomasson. She stated she met Ms. Thomasson at the time of Mrs. Clinton's arrival in Little Rock, probably in the late 1970's. She stated Ms. Thomasson was active in the Arkansas Democratic Party politics where she was working for Senator David Pryor. She recalled that she and Ms. Thomasson used the same hairdresser and they became friends. Mrs. Clinton learned that Ms. Thomasson was working for Dan Lasater although Mrs. Clinton was unaware of any RLF attorney, including herself, having ever provided her, Mr. Lasater or the company any legal advice or representation. She recalled that Ms. Thomasson had a position of apparently great responsibility with Mr. Lasater's company and that it occasionally became stressful for Ms. Thomasson particularly during the time when she was caring for her elderly mother who was very ill and later died.

Mrs. Clinton stated she was unaware if Ms. Thomasson had power of attorney

file Mr. Lasater was in prison in 1987. She stated she never discussed the First American v. Lasater lawsuit with Ms. Thomasson or Mr. Lasater.

5. Clinton was asked several questions relative to RLF work regarding Home Federal Savings. Mrs. Clinton indicated she had no knowledge or collection regarding any matters involving Home Federal and is unaware of ever having done any work on this matter or having been involved in any settlement negotiations. She stated she does not recall ever discussing the Home Federal case with anyone, particularly Mr. Lasater or Ms. Thomasson. She had no recollection regarding Tom Mars, a former RLF attorney, being substituted as counsel for United Capital after Mr. Lasater gained control of the company.

6. Clinton was then asked several questions regarding the RLF doing work regarding Madison Guaranty Savings and Loan Association and related actions with RLF attorneys. First, Mrs. Clinton was asked whether Webster Hubbell sent a memorandum to other RLF attorneys regarding conflicts of interest prior to agreeing to litigate the Madison lawsuit against Frost. Mrs. Clinton said she did not specifically recall this having been done although it would be the normal practice and probably what was done in this case. Mrs. Clinton indicated she did not consider herself to be the attorney of record for Rose's representation of Madison before the ASD and presumed it to be Rick Massey. She recalled Massey came to her and asked her to be the litigating attorney which was a normal practice when an associate was handling a matter. She said that she believed Madison (then as Madison National Bank) had been a client of the RLF since 1982 and that Vincent Foster had been the responsible attorney. Later, in 1985, Mrs. Clinton recalled that an (individual unknown) approached Rick Massey regarding a preferred stock offering in an effort to raise capital.

7. Regarding Rose working on the Frost litigation, Mrs. Clinton stated she did not think it was a conflict of interest because of Rose's prior work on litigation involving the Arkansas Securities Department. Mrs. Clinton indicated that it would have been normal to advise Webster Hubbell regarding her work involving the Arkansas Securities Department although she has no memory of doing so. She believed that Rick Massey probably talked to Hubbell about this issue. Regarding the Frost litigation which was handled by RLF, Mrs. Clinton was asked if she recused herself from this matter. She did not recall recusing herself from this matter although she did recuse herself from all matters involving the State of Arkansas because of her husband's position as governor. Mrs. Clinton stated she does not believe Rose had a conflict of interest regarding Madison.

8. Clinton indicated she has known Beverly Bassett Schaeffer (Arkansas Securities Department) and her family for approximately 20 years. When Rick Massey prepared a letter to Ms. Bassett Schaeffer, Mrs. Clinton's name was used as the RLF contact because she was a partner and Massey only an associate.

9. Clinton was shown a January 30, 1986 RLF bill to Madison Guaranty for \$70,000; she did not recall the matter but presumed her name was listed as a litigating partner.

10. Clinton was shown a January 23, 1986 memo from Rick Donovan re Madison

Guaranty v. IDC. She recalled the issue pertained to researching townships and the topic of "wet/dry" licensing approval for alcohol consumption. She stated this matter was handled by Rick Donovan.

Mrs. Clinton was asked regarding discussions with RLF attorney Carol Arnold and a client who had painted a portrait for Madison Guaranty. She stated she did not recall any discussions regarding this matter.

Regarding Webster Hubbell and the Ward family. Mrs. Clinton said she knew Seth Ward as Mrs. Susie Hubbell's father. She did not know what Deta Corporation was but acknowledged knowing that P. O. M., Inc. was a Rose client. She indicated Webster Hubbell and other lawyers at the firm did work for POM. She said she believed Hubbell also represented Seth Ward as an individual on many issues. Mrs. Clinton stated she did not recall ever having personally worked with or for Webster Hubbell on any issues involving POM, although she stated Mr. Kendall told her she probably did do some work on it. She stated she was unaware of Mr. Hubbell being a corporate official of POM and was unaware of any "firewall" which may have been arranged at the RLF regarding Mr. Hubbell and Ward. Further, she stated she was unaware that Mr. Ward had filed suit against Madison.

Mrs. Clinton was asked when was the last time she spoke with Mr. Hubbell. She indicated it was several weeks ago when he attended a surprise birthday party for her at the White House. She stated she has never discussed any issues regarding Madison Guaranty or other matters currently being investigated.

Mrs. Clinton was asked about her relationship with Harold Ickes. She stated she has known him for approximately 20 years. She did not recall how he may have been involved in any POM issues but opined she may have referred some legal work to Mr. Ickes' New York firm.

Regarding Patricia Heritage, Mrs. Clinton indicated she knows her and that she had been hired by the RLF Commercial Section. She, however, was not a part of any conversations which may have been conducted at the RLF involving whether or not to hire Ms. Heritage.

Mrs. Clinton was asked about Ms. Jenny Baldrige Speed. She acknowledged knowing her as Gary Speed's wife but stated she was unaware Ms. Speed had been a part owner of Madison.

Mrs. Clinton was also asked questions about having worked on Penn Square Savings and Loan and Savers Savings and Loan; she stated she did not recall having worked on either of these institutions. Specifically, regarding Penn Square, she has no recollection of ever working on a lawsuit involving Southwest Drilling Associates.

Mrs. Clinton was asked about Lee Bowman and First South Savings and Loan Association; Mrs. Clinton indicated she had no recollection of this matter although she stated she does know Mr. Bowman.

Regarding Babcock loans and Madison Guaranty, Mrs. Clinton stated she only had a vague recollection of this matter and that it was somehow related to Madison.

Mrs. Clinton was asked if she ever represented Jim Guy Tucker and she said she had not; she was also asked about the Castle Grande sewer project and indicated she was familiar with the name but had no other knowledge of the matter.

Regarding FirstSouth Savings, Mrs. Clinton recalled there were issues involving C. Joseph Giroir, a former Rose partner, but was unaware of what those issues may have been. She stated she had no involvement with the FSLIC and any negotiations involving FirstSouth or Mr. Giroir.

Mrs. Clinton was asked to describe her present contacts with the RLF and/or attorneys assigned there. She stated that she has had no professional or business dealings with the RLF or any of its attorneys since coming to Washington in January 1993. She has had occasional personal contacts on a few occasions with a few of the attorneys. For example, she said she met with Carol Arnold recently while she (Mrs. Clinton) was in Seattle.

Mrs. Clinton was asked if she had any other information she would like to relate regarding any of the subjects discussed or described in her affidavit. She indicated she had no further information to relate and the interview was concluded at 10:33 a.m.

END OF RECORD OF INTERVIEW; PAGE 5 OF 5

Prepared by: [REDACTED]

Date: 12/6/94

Concurred by: [REDACTED]

Date: 12/6/94

LAW OFFICES OF
ROSE LAW FIRM
 A PROFESSIONAL ASSOCIATION
 120 EAST FOURTH STREET

LITTLE ROCK, ARKANSAS 72201

CLIENT: 90263

PHONE (501) 375-9131

MADISON GUARANTY SAVINGS/LOAN
 CO. JOHN LATHAM, PRESIDENT
 10TH AND MAIN
 LITTLE ROCK, AR 72201

INVOICE # 4

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #71-0438814) - RETURN THIS STUB WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED IN CONNECTION WITH PAID 2018.00

MATTER: (C)

CK #

STOCK OFFERING

DATE: 5-21-85

04/23/85 H. CLINTON

CONFERENCE WITH J. MCCUGAL AND J.
 LATHAM; CONFERENCE WITH R. MASSEY;
 CONFERENCE WITH W. GREGORY

04/23/85 L. BALEDGE

CONFERENCE WITH R. MASSEY
 RESEARCH ON PREFERRED STOCK OFFERING

04/23/85 R. MASSEY

CONFERENCE WITH JOHN LATHAM;
 CONFERENCE WITH HILLARY RODHAM
 CLINTON; CONFERENCE WITH LES BALEDGE
 TELEPHONE CONFERENCES WITH R. MASSEY,
 JOHN LATHAM, DAVIS PITTMAN;
 CONFERENCE WITH R. MASSEY; REVIEW
 DRAFT DOCUMENTS

04/24/85 S. GRIMES

DRAFT MINUTES, RESOLUTIONS TO AMEND
 CERTIFICATE OF INCORPORATION TO CREATE
 CLASS OF PREFERRED STOCK PER R.
 MASSEY'S INSTRUCTIONS; RELATED
 RESEARCH

04/24/85 R. MASSEY

PREFERRED STOCK OFFERINGS; RESEARCH
 STATE & FEDERAL LAW ON STOCK
 AUTHORITY; DRAFTING DOCUMENTS

04/25/85 H. CLINTON

REVIEW OF SUBSCRIPTION AGREEMENTS;
 CONFERENCE WITH R. MASSEY

04/25/85 R. MASSEY

DRAFTING & REVISE DOCUMENTS;
 CONFERENCE WITH JOHN LATHAM AND
 HILLARY RODHAM CLINTON

04/26/85 W. GREGORY

CONFERENCES WITH R. MASSEY REGARDING
 CAPITAL - RAISING PLANS; REVIEW OF
 CONSENT ON DRAFT SUBSCRIPTION
 AGREEMENT

04/26/85 R. MASSEY

CONFERENCE WITH JOHN LATHAM REGARDING
 CLASS; RESEARCH ESOLIC REGISTRATION
 STATEMENT; DRAFTING DOCUMENTS

04/29/85 H. CLINTON

TELEPHONE CONFERENCE WITH R. MASSEY;
 ESOLIC COMMISSIONER; TELEPHONE
 CONFERENCE WITH R. MASSEY

ROSE LAW FIRM

DKSN028934

PAGE 1

JOSE LAW FIRM

REPORT ID BILLPAY
02/12/92 08:41
CLIENT BILLING & PAYMENT HISTORY
ST CLIENT ID: 00000000000000000000
FOR PERIOD 1 JAN 88 TO 31 DEC 99

CLIENT 98262 MADISSA GUARANITY SAVINGS/LOAN

DATE	BILL TYPE	INVOICE	AMOUNT	OVER/UNDER	BILLER	DATE	REAL	AMOUNT	BALANCE
01/12/88	INV W/ REAL FEE	03/08/85	2,018.00	0.00	MILLARI CLINION	76.73	05/21/85	(2,018.00)	.00
01/12/88	INV W/ REAL FEE	06/10/85	185.00	0.00		86.57	36/17/85	(186.00)	.00
01/12/88	INV W/ REAL FEE	07/15/85	1,890.00	0.00		40.38	37/24/85	(1,890.00)	.00
01/12/88	INV W/ REAL FEE	08/09/85	637.00	0.00		75.41	11/19/85	(732.35)	86.65
01/12/88	INV W/ REAL FEE	09/12/85	90.00	0.00		75.00	12/09/85	(90.00)	.00
01/12/88	INV W/ REAL FEE	12/05/85	655.00	0.00		79.88	12/09/85	(655.00)	.00
01/12/88	INV W/ REAL FEE	01/28/86	1,755.00	0.00		128.10	01/30/86	(1,735.00)	.20
01/12/88	INV W/ REAL FEE	07/28/86	19.50	0.00			A/R TFR.	(18.50)	.20
01/12/88	INV W/ REAL FEE	07/28/86	5.59	0.00			08/05/86	.00	.00
01/12/88	INV W/ REAL FEE	01/15/87	6.50	0.00			CASH REC	(5.59)	.00
01/12/88	INV W/ REAL FEE	01/15/87	6.50	0.00			31/28/87	.00	.00
01/12/88	INV W/ REAL FEE	01/15/87	6.50	0.00			CASH REC	(6.30)	.00
01/12/88	INV W/ REAL FEE	01/15/87	7,431.00	0.00		79.14		(7,431.00)	.00
01/12/88	INV W/ REAL FEE	01/15/87	131.94	0.00				(131.94)	.00
01/12/88	INV W/ REAL FEE	01/15/87	879.00	0.00	MILLARI CLINION	57.10	36/17/85	(879.00)	.00
01/12/88	INV W/ REAL FEE	01/15/87	13.00	0.00			A/R TFR.	(13.00)	.00
01/12/88	INV W/ REAL FEE	09/12/85	23.00	0.00		140.00	12/09/85	(128.00)	.00
01/12/88	INV W/ REAL FEE	12/05/85	722.50	0.00		96.01	12/09/85	(732.50)	.00
01/12/88	INV W/ REAL FEE	12/05/85	722.50	0.00			A/R TFR.	(722.50)	.00
01/12/88	INV W/ REAL FEE	12/05/85	722.50	0.00				(722.50)	.00

DKSN028928

CALLING MEMORANDUM 19428 3 07/06/85 PAGE 1 WILLIAMS CLINTON

98262 RADISON GUARANTY SAVINGS/LOAN
 RE: JOHN LATHAM, PRESIDENT
 18TH AND MAIN
 LITTLE ROCK, AR 72201

2 LIMITED PARTNERSHIP

COMBINED MEMORANDUM

ATTY	DATE	TIME	VALUE	PATTER	DESCRIPTION OF SERVICES RENDERED	
11	05/20/85	1-20	75.00		CONFERENCE WITH DAVID FITZMUGH, RESEARCH SLD, D	1494
12	05/28/85	1-30	97.50		REVIEW ASLAW RESPONSE TO COMMENTS; REVIEW REGULATIONS	1497
13	05/30/85	2-10	136.50		RESEARCH ASLAW REGULATIONS; RESEARCH FALSE REGULATIONS; RE: D/D	1498
14	06/03/85	1-20	117.00		REVIEW RESPONSE LETTER TO ASLAW; TELEPHONE CONFERENCE WITH JOHN LATHAM, DAVID	1500
15	06/04/85	1-40	104.00		REVIEW APPLICATION TO ASLAW; CONFERENCE WITH GREG YOUNG, SARAH HARKINS	1536C
16	06/05/85	1-80	117.00		CONFERENCE WITH D. FITZMUGH, S. HARKINS	1537C
17	06/07/85	2-40	149.00		REVIEW APPLICATIONS; RESEARCH ASLAW RULES	1538B
18	06/11/85	1-30	26.50		DRAFTING RESPONSE TO ASLAW MEMO; TELEPHONE CONFERENCE WITH D. FITZMUGH	1660F
19	06/12/85	1-30	26.50		REVIEW RESPONSE TO ASLAW RE: BROKERAGE APPLICATION	1672
20	06/17/85	1-80	117.00		DRAFT/REVIEW RE: NSE TO ASLAW APPLICATION	1674
21	06/17/85	1-50	45.00		RESEARCH REGULATIONS	1676
22	06/17/85	1-30	84.50		REVIEW ASLAW REGULATIONS; CONFERENCE WITH S. HARKINS, D. FITZMUGH, P. HERITAGE	1684
23	06/18/85	1-80	54.00		REVIEW OF REGULATIONS OF FHLBB & FSIC	1702
24	06/18/85	1-10	21.50		CONFERENCE WITH S. HARKINS, D. KNIGHT, CHARLES MANDLEY	1704
25	06/19/85	1-10	21.50		CONFERENCE WITH S. HARKINS, D. KNIGHT, CHARLES MANDLEY	1706
26	06/23/85	2-10	45.50		CONFERENCE WITH S. HARKINS, D. KNIGHT, CHARLES MANDLEY	1708
27	07/01/85	2-40	52.00		CONFERENCE WITH S. HARKINS, D. KNIGHT, CHARLES MANDLEY	1710
FEE TOTAL				23.80	1424.50	
DISBURSEMENTS						
ATTY	DATE	CHECK	DISB APT	QUAN	DESCRIPTION OF DISBURSEMENT	
			52.95	353	PHOTOCOPY EXPENSE (415)	
CISO TOTAL					52.95	

TIME SUMMARY BY ATTORNEY

ATTORNEY	TYPE	STANDARD VALUE	PATTER VALUE	AMOUNT TC BILL	1/HR	LAST	PICE
11 RMC	RICHARD PASSEY	20.30	1319.50	1319.50	65.00	07/01/85	
43 HRC	WILLIAM CLINTON	1.00			30.00	06/18/85	52.95
52 CR	CHRIST ROBERTS	1.50	105.00	105.00			
5599 TAP	TAP ATTORNEY						
TOTAL FEES				1424.50	55.00		
TOTAL DISB				52.95			
				1477.45			

DKSN028962

Recap of fees from Madison Guaranty Savings & Loan
FINAL RECORD

1983 None

1984 None

1985 January - None

Feb./Mar./April '85
None

May '85				
Baldridge	Madison Guaranty			82.50
Massey	Madison Guaranty			695.50
S. Grimes	Madison Guaranty			250.00
Clinton	Madison Guaranty			840.00

June '85				
Clinton	Madison Guaranty			60.00
Massey	Madison Guaranty/stock offering			146.00
Massey	Madison Guaranty/stock offering			819.00

July '85				
D. Thomas	Madison Guaranty/Stock			90.00
Girair	" " " "			55.00
Massey	" " " "			1,191.00
Law Clerks	" " " "			210.00
Clinton	" " " "			144.00

Aug/Sept/Oct. '85
None

Nov. '85				
Thrasn	Madison Guaranty/IDC			550.00
Thrasn	" " " "			283.50
Thrasn	" " " /Stock offering			155.50
Speed	Madison Guaranty/Stock Offering			112.50
Massey	" " " "			552.50

Dec. '85				
Gary Garrett	Madison Guaranty/Stock Offering			585.00
Girair	" " " "			100.00
Girair	" " " "			225.00
Massey	" " " "			555.00
Massey	" " " "			437.50
Massey	" " " "			214.00
Clinton	" " " "			88.00
Clinton	Madison Guaranty			232.50
Donovan	Madison Guaranty/Stock Offering			90.00

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- 111 pag.

1986

January 86			
Oonovan	Madison Guaranty/Stock Offering & IDC		98.00
Cave Thomas	" " " "		98.00
Massey	" " " "		98.00
Massey	Madison Guaranty/Limited Partnership		155.00
S. Grimes	Madison Guaranty/Stock Offering		62.50
Clinton	Madison Guaranty/Stock Offering & IDC	1	711.25
Clinton	Madison Guaranty/Limited Partnership		62.50
Clinton	Madison Guaranty/Stock Offering		80.00
March 86			
Oonovan	Madison Guaranty/IDC Stock offering		525.00
B. Arnold	Madison Guaranty/Stock Offering		80.00
April 86			
B. Arnold	Madison Guaranty/Stock Offering		235.00
Oonovan	Madison Guaranty/Stock Offering		215.75
Clinton	Madison Guaranty/Stock Offering		15.50
Clinton	" " " "		251.50
May 86			
Clinton	Madison Guaranty		80.00
Clinton	Madison Guaranty/Sandcock	1,000	50.00
Clinton	Madison Guaranty/IDC		70.00
Clinton	Madison Guaranty/General		197.11
Massey	Madison Guaranty/General		112.50
B. Arnold	Madison Guaranty/IDC		48.00
July 86			
Clinton	Madison Guaranty/General		56.00
Clinton	Madison Guaranty/Sandcock		108.00
October 86			
Clinton	Madison Guaranty/Sandcock Loan		84.00

1987

September 1987			
Clinton	Madison Guaranty/General		500.00

RLF2 03031

**CONFIDENTIAL--PRODUCED BY THE RTC TO THE
SENATE SPECIAL COMMITTEE**

**MADISON GUARANTY SAVINGS & LOAN
AND
WHITEWATER DEVELOPMENT COMPANY, INC.**

**A SUPPLEMENTAL REPORT
TO THE RESOLUTION TRUST CORPORATION**

Prepared by

**Pillsbury Madison & Sutro LLP
San Francisco, California**

**With financial and economic
analysis support from**

**Tucker Alan Inc.
Seattle, Washington**

December 13, 1995

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CONFIDENTIAL—PRODUCED BY THE RTC TO THE
 SENATE SPECIAL COMMITTEE

I. INTRODUCTION.

On February 4, 1994, the Resolution Trust Corporation ("RTC") issued an Order of Investigation in the matter of Madison Guaranty Savings and Loan, McCrory, Arkansas ("Madison Guaranty"). The Order of Investigation stated (among other things) that the investigation would seek to determine whether

former officers, directors and others who provided services to, or otherwise dealt with, Madison Guaranty . . . its successors or affiliates, may be liable as a result of any actions, or failures to act, in connection with or which may have affected Madison, its successors or affiliates

The Order was issued consistent with 12 U.S.C. § 1441a(b)(14), as modified by the RTC Completion Act of 1993, Public Law 103-204. That statute extended the limitations period applicable to RTC claims arising from fraud, intentional misconduct resulting in unjust enrichment and intentional misconduct resulting in substantial losses to the institution.

The focus of the investigation was shaped by several factors. First, a number of the officers, directors and other people involved with Madison Guaranty and related entities had been released from liability or discharged in bankruptcy, or had only minimal assets to satisfy any judgment that the RTC might obtain against them. Second, the losses associated with a number of the real estate loans and projects were, standing alone, too small to make it likely that litigation could be cost-effective. Third, it became apparent that funds had been transferred among individuals and entities associated with Madison Guaranty or with Madison Guaranty's principal owners, Jim and Susan McDougal, in ways that could not readily be justified or explained.

In light of these factors, (1) the investigation of real estate loans and projects focused primarily on the two transactions presenting the strongest combination of facts and possible sources of recovery (Castle Grande and 1308 Main Street, Little Rock); (2) the investigation of other real estate loans and projects looked for patterns and practices of misconduct that might make it cost-effective and not unduly complex to add these transactions to any litigation that might be brought based on Castle Grande and 1308 Main Street; and (3) the investigation of Whitewater included an effort, using forensic accountants, to trace funds back to Madison Guaranty and, in so doing, to look for patterns and practices of misconduct in the funds transfers among individuals and entities associated with Madison Guaranty or with Jim and Susan McDougal.

The Whitewater part of the investigation resulted in a Preliminary Report on Whitewater dated April 24, 1995 (the "Preliminary Report"). This report

supplements that Preliminary Report. Other reports cover the other parts of the investigation.

The Preliminary Report was based principally upon an intensive review of the available documentation on Madison Guaranty, on Whitewater and on various other entities owned or controlled by the principal shareholders of Madison Guaranty, Jim and Susan McDougal. In addition, the Preliminary Report was based upon depositions and interviews of Jim Clark, David Capes, Steve Cuffman, Don Denton, Pat Harris, Sarah Hawkins, Charles James, Bob Keller, Charles Peacock III, R. D. Randolph, John Selig, Sue Strayhorn, Tommy Trantham and Chris Wade.

Efforts have been made to obtain information from those most closely associated with Whitewater, including the Clintons, Charles James, the McDougals and Chris Wade. Before the completion of the Preliminary Report, James and Wade were interviewed, and the McDougals both declined to be deposed, basing their refusal on the Fifth Amendment. Since the completion of the Preliminary Report, President and Mrs. Clinton each have answered extensive sets of interrogatories, and their counsel, David E. Kendall, has supplemented his earlier document productions. Efforts have been made to interview Chris Wade in more depth. He has refused, basing his refusal on the Fifth Amendment. Efforts also have been made to take statements from David Hale and John Latham but they remain unavailable due to the ongoing Independent Counsel investigation.

Part II of this report supplements the Preliminary Report with newly received evidence regarding the flow-of-funds investigation presented in part VII of the Preliminary Report. This evidence consists chiefly of additional documents obtained from the RTC's Kansas City office and additional interviews of former Madison Guaranty employees Paul Castleberry and Greg Young. The Preliminary Report sought to trace funds from Madison Guaranty to Whitewater but did not determine whether such funds transfers actually damaged Madison Guaranty; the new evidence helps determine whether Madison Guaranty was damaged. For some of the traceable transactions, no basis was found to conclude that the transaction damaged Madison Guaranty. For other transactions (transaction 8 presented in part VII of the Preliminary Report and the \$30,000 McDougal bonus presented in part VIII.A of the Preliminary Report), the new evidence suggests that the transaction did damage Madison Guaranty. Overall, the new evidence tends to confirm the Preliminary Report's observation that the movement of funds among McDougal-controlled entities and from them to Whitewater was not unique, but instead was one example of a broader pattern of funds transfers by the McDougals between and among entities they owned or controlled, apparently motivated by the McDougals' need for funds with which to pay their debts.

Part II also analyzes whether the RTC can state a claim against anyone based on the Whitewater part of the investigation. The conclusion reached is that no cost-effective claim can be asserted except possibly as to one aspect of transaction 8. This aspect is a subject of the indictment brought by the Independent Counsel against the McDougals and Jim Guy Tucker; it has only a tangential connection to Whitewater. This conclusion does not necessarily mean that the other transactions discussed in the Preliminary Report have been proved legitimate or that the evidence exonerates anyone; it simply means that no basis has been found to sue anyone, or in some instances that litigation would not be cost-effective.

Part III of this report supplements the Preliminary Report with newly received evidence pertaining to the Clintons. This evidence consists chiefly of the interrogatory responses of President and Mrs. Clinton, additional documents received from Kendall in late May 1995 and the documents mentioning Whitewater that Kendall received from the White House in July 1993 (the documents from the office of the late Vincent W. Foster, Jr.).¹ This evidence has been examined against the previously available evidence both for points of consistency and for points of inconsistency. With minor exceptions, the new evidence is consistent with the previously available evidence.

Part III also addresses the questions posed but not fully answered in the Preliminary Report as to whether the Clintons knew about the McDougals' advances to Whitewater, about the source of the funds used by the McDougals to make those advances or about the source of the funds used to make payments on bank debt. The conclusion reached is that no such knowledge can be demonstrated.

Finally, part IV of this report contains recommendations that no further resources be expended on the Whitewater part of the investigation and that a final decision with respect to Transaction 8 be postponed until the criminal proceedings brought by the Independent Counsel are resolved.

¹ The documents received from Kendall in May 1995 bear the prefix "DKRT11" (meaning box 11 of the DKRT documents) followed by six digits. The documents received from Kendall in July 1995 (the Foster documents, described by Kendall as "all documents mentioning Whitewater in the files this firm received from the White House on July 27, 1993") bear the prefix "DKSN" followed by six digits. The additional documents received from the RTC's Kansas City office bear the prefix "RTCKC" followed by numbers starting with 44320.

II. SUMMARY AND ANALYSIS OF NEWLY RECEIVED INFORMATION PERTAINING TO THE TRANSACTIONS PRESENTED IN THE PRELIMINARY REPORT.

A. The applicable legal standard.

Congress established the RTC "to contain, manage, and resolve failed savings associations."² Congress gave the RTC the statutory duty of "maximiz[ing] the net present value return from the sale or other disposition of institutions . . . or the assets of such institutions . . . [and] minimiz[ing] the amount of any loss realized in the resolution of cases"³ The RTC fulfills this responsibility in part by bringing civil actions in appropriate cases to recover damages.⁴ Such cases are brought, however, only if there is reason to believe that the litigation will add to the value of the savings association's estate and thus minimize the losses caused by its failure. If there is no reason to believe that litigation will result in a net recovery, then there is no statutory basis to file a case.

This statutory mandate requires the determination of whether the Whitewater part of the investigation has revealed potential claims that can be litigated in a cost-effective manner. Put another way, the issue is whether claims can be stated that have an expected value greater than the expected cost of litigating them.

Part II focuses on the nine transactions presented in part VII of the Preliminary Report plus the \$30,000 McDougal bonus presented in part VIII.A of the Preliminary Report. It starts with damages and then turns to liability.

B. Analysis of damages.

The Preliminary Report stated that, between 1982 and 1986 (the years in which Jim McDougal controlled Madison Guaranty), the McDougals and McDougal-controlled entities advanced \$134,294 to Whitewater.⁵ This occurred through nine separate transactions discussed in parts VII of the Preliminary Report plus the McDougal bonus discussed in part VIII.A of the Preliminary Report.

2 . . . Section 101(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 364.

3 . . . 12 U.S.C. § 1441a(b)(3)(C), as amended by FIRREA § 501.

4 . . . 12 U.S.C. §§ 1821(d)(2), (k), (l), as amended by FIRREA § 212.

5 . . . Preliminary Report at 4 (footnote omitted).

This figure of \$134,294 places an upper bound on the benefit to Whitewater from funds traceable to Madison Guaranty if liability could be established as to all nine of the transactions plus the bonus. It does not mean, however, that liability, if established, would lead to recoverable damages of this magnitude. There are several reasons for this:

1. The Preliminary Report concluded that \$134,294 was deposited by McDougal and McDougal-controlled entities into Whitewater during the years in which McDougal controlled Madison Guaranty. That \$134,294 was split into four pieces:

a. \$20,752 cannot be traced back to Madison Guaranty because certain Madison Guaranty documents (bank statements, checks and deposit slips) are missing.

b. \$25,520 cannot be traced back to Madison Guaranty, again because certain bank statements, checks and deposit slips are missing, but in addition because money is fungible—the accounts through which this money flowed had sufficient balances so that the source of the funds that eventually reached Whitewater cannot be determined from documentary evidence alone.

c. \$58,022 can be traced back to Madison Guaranty, subject to the qualifications noted in the Preliminary Report. (This \$58,022 covers transactions 1, 3A, 3B, 6, 8 and 9 discussed at pages 71 through 87 of the Preliminary Report.)

d. \$30,000 went directly from Madison Financial into the Whitewater account. (This is the \$30,000 McDougal bonus paid in April 1985 discussed at pages 94 through 102 of the Preliminary Report.)

Of the four pieces, the first two cannot even be traced to Madison Guaranty. Therefore, it cannot be established that this money caused a loss to Madison Guaranty. The other two pieces (the \$58,022 and the \$30,000) can be traced to Madison Guaranty, but this does not mean that these transactions caused Madison Guaranty to lose money, or that the loss to Madison Guaranty is equal to the benefit to Whitewater.

2. The Preliminary Report also concluded that \$39,474 from other sources paid down bank debt related to Whitewater. In a number of instances, bank debt related to Whitewater was paid back in part out of bank accounts other than Whitewater's. In most such instances the payor is known, but in 11 such instances, totaling \$39,474, the payor is unknown. The evidence does not tie these payments to Madison Guaranty, Madison Financial or any of the 39 McDougal-related Madison Guaranty accounts studied as part of the funds-tracing work presented in the Preliminary Report. The source of this money is not known and, accordingly, cannot be tied in any way to Madison Guaranty.

Therefore, it cannot be established that the money caused Madison Guaranty any loss.

To summarize: the Preliminary Report discussed a total of \$173,768 (\$134,294 + \$39,474). Of this, the evidence does not tie \$85,746 (\$20,752 + \$25,520 + \$39,474) to Madison Guaranty. Another \$30,000 (the April 1985 McDougal bonus) came directly from Madison Financial but did not benefit Whitewater; it simply passed through Whitewater on its way to an unrelated transaction.⁶

This leaves the \$58,022 that is traceable. This \$58,022 is spread among six transactions (nos. 1, 3A, 3B, 6, 8 and 9). Of these six, only one appears to be potentially actionable. That transaction (transaction 8, discussed below) involved a deposit into Whitewater of \$24,456.

The foregoing summary focuses on benefit to Whitewater rather than harm to Madison Guaranty. For most causes of action, however, the best measure of damages would be harm to Madison Guaranty. Using that yardstick, the untraceable \$85,746 remains irrelevant, but not so the \$30,000 McDougal bonus and transaction 8. If the bonus was wrongful, it caused \$30,000 of harm to Madison Guaranty even though it conferred no benefit on Whitewater. Similarly, if transaction 8 was wrongful, it may have caused harm to Madison Guaranty that substantially exceeds the benefit to Whitewater.

The example of transaction 8 illustrates how disbursements out of Madison Guaranty sometimes were significantly larger than the related deposits into Whitewater. This is further illustrated by the following table (the charts listed are attached to this report; all but chart 12A, which is new, were part of the appendix to the Preliminary Report):

⁶ "To summarize, the evidence suggests that the Deltic/Earth Movers transaction had no substantial relationship to Whitewater. Instead, it appears that \$30,000 flowed through the Whitewater account for reasons that appear unrelated to Whitewater, much as funds destined for Whitewater sometimes flowed through the accounts of other McDougal-controlled entities for reasons seemingly unrelated to those entities. Also, nothing seen to date suggests that Senator Fulbright or the Clintons had any knowledge that the \$30,000 that Senator Fulbright eventually received had any relationship to Whitewater, Madison Financial or Madison Guaranty." Preliminary Report at 102.

<u>Transaction</u>	<u>Chart</u>	<u>Disbursement Out of Madison Guaranty or Affiliate</u>	<u>Deposit Into Whitewater</u>
1	8	\$ 50,545	\$ 7,500
3A	9	12,650	12,000
3B	10	68,574	5,566
6	11	46,000	1,000
8	12, 12A	900,949	24,456
9	13	112,872	7,500
Bonus	14	<u>30,000</u>	<u>30,000</u>
Totals		\$1,221,590	\$88,022

As can be seen, there is not necessarily any relationship between the dollar amount of the disbursement out of Madison Guaranty and the dollar amount of the associated deposit into Whitewater. There are several reasons for this:

First, the movement of funds among McDougal-controlled entities and from them to Whitewater is not unique but only one example of a broader pattern of funds transfers by the McDougals between and among entities they owned or controlled. In these years, the McDougals lacked the money needed to pay their debts, so they moved money between entities as needed to pay obligations to third persons.⁷ A desire to deposit money into Whitewater for Whitewater's ultimate benefit cannot be assumed to be the primary rationale behind a particular transaction; other debts may have loomed much larger.

Second, a disbursement out of Madison Guaranty cannot be assumed to have resulted in a loss or damages to Madison Guaranty. Typically, these disbursements were not loans that went unpaid. Instead, typically they were payments to vendors or employees (including McDougal).⁸ Because these disbursements were not loans, Madison Guaranty had no expectation of repayment. Therefore, these disbursements caused a loss to Madison Guaranty only if the vendors or the employees were not entitled to receive the

7 Preliminary Report at 5.

8 Among the nine transactions and the McDougal bonus, the only disbursement out of Madison Guaranty that took the form of a loan was part of transaction 8. As the table shows, however, the dollar amount of that loan (\$825,000) exceeds the sum of the other disbursements.

money, i.e., if the payments were excessive or undeserved.⁹ As discussed below, that seems to be the case only as to two McDougal bonuses--the \$30,000 bonus paid in April 1985 and another \$75,949 paid in January 1986.¹⁰

For these reasons, the damages (if any) to Madison Guaranty from these transactions cannot be calculated without a review of the theories of liability.

C. Analysis of liability.

The RTC is successor in interest to Madison Guaranty. Therefore, to have a meritorious claim against someone, it must establish (1) liability--that is, a wrongful act--on the part of someone *and* (2) damage to Madison Guaranty caused by that person's wrongful act.

To evaluate whether a transaction has created liability *and* damages, the best place to focus is the means by which money left Madison Guaranty on its way to Whitewater (assuming traceability can be established). The focus is on money leaving Madison Guaranty because this is the point at which a transaction might have resulted in damages to Madison Guaranty.

To illustrate this point, take, for example, transaction 1: Money left Madison Guaranty in the form of payments totaling \$50,545 to West-Ark Construction, a construction company. West-Ark sent \$14,690 to Tucker-Smith-McDougal, and Tucker-Smith-McDougal sent \$7,500 to Whitewater.¹¹ Madison Guaranty did not own West-Ark or Tucker-Smith-McDougal. Therefore, if West-Ark lost \$14,620 or if Tucker-Smith-McDougal lost \$7,500 by this transaction, that is their business; such losses did not affect Madison Guaranty. From Madison Guaranty's point of view (hence the RTC's point of view), the only money that matters is the money that Madison Guaranty disbursed. If that disbursement was legitimate--if West-Ark really had performed legitimate construction services worth \$50,545--then Madison Guaranty lost nothing, even if the transactions among West-Ark, Tucker-Smith-McDougal and Whitewater were wrongful. Thus, as receiver, the RTC need determine whether a given transaction's disbursements out of Madison Guaranty (a) were wrongful *and* (b) damaged Madison Guaranty.

Applying these principles, this section analyzes transactions 1, 3A, 3B, 6, 8 and 9 discussed at pages 71-87 of the Preliminary Report plus the \$30,000

9 A payment to a vendor may have been completely justified: The vendor may have performed legitimate services at a fair price. If so, the payment caused no damage to Madison Guaranty even if some of the money later ended up in Whitewater.

10 Also as discussed below, there is no substantial evidence that the other transactions were improper or caused a loss to Madison Guaranty.

11 See chart 8.

McDougal bonus discussed at pages 94-102 of the Preliminary Report.¹² Together, these transactions account for all of the potential damages analyzed above.¹³

In the Preliminary Report, these transactions were discussed chronologically, starting with transaction 1 in August-September 1984 and ending with transaction 9 in October-November 1985. For analytical purposes, however, it makes more sense to group these transactions by payee--that is, by the person or entity who first received the money that left Madison Guaranty. If that person or entity was entitled to the money, then Madison Guaranty was not damaged by the transaction. If so, no further analysis is needed: Without damages, the RTC has no claim.

1. Transactions benefiting West-Ark Construction.

West-Ark Construction, which was owned by Jim McDougal's old friend R. D. Randolph, performed construction services at a number of Madison Financial's real estate projects, including Maple Creek. Transactions 1 and 3A involve payments to West-Ark.

a. Transaction 1 (chart 8), August-September 1984.

As noted above, and as chart 8 illustrates, Madison Guaranty sent \$50,545 to West-Ark Construction, a construction company. At approximately the same time, West-Ark sent \$14,690 to Tucker-Smith-McDougal, and Tucker-Smith-McDougal sent \$7,500 to Whitewater. As chart 7 illustrates, Whitewater used the \$7,500 to make a \$7,500 payment to the Bank of Cherry Valley.

In August and September 1984, the \$50,545 left Madison Financial in two checks to West-Ark Construction.¹⁴ One check, dated August 28, 1984, was for \$20,545; the other check, dated August 31, 1984, was for \$30,000. Neither check states its purpose. Both payments were posted to Madison Financial's general ledger in account 2300, "Reserve for Development."¹⁵

12 Transactions 2, 4, 5 and 7 can be ignored. None was traceable back to Madison Guaranty. There is no evidence that any caused a loss to Madison Guaranty.

13 The transaction numbers correspond to the transaction numbers on chart 7.

14 IC14170, IC14773. Both were signed by Paul Castleberry. Castleberry interview, Nov. 2, 1995, at 14-15.

15 RTCKC44320. Such accounts typically were used to hold expenditures on developing real estate projects that occurred before lot sales began. For accounting purposes such expenditures were capitalized (i.e., added to the basis of the real estate).

An unsuccessful attempt was made to find West-Ark's invoices, Madison Financial's journal vouchers and other documents backing up these two payments. RTC Investigations, which conducted the search, states that "the accounts payable folder for 1984 for this general ledger account [is] missing from the accounts payable information."¹⁶ Such folders typically contain invoices and journal vouchers.

Without such documents, little can be said about the nature and propriety of these payments. At the time, however, West-Ark was performing construction work (typically grading lots and other bulldozing activities) for Madison Financial at several projects.¹⁷

To the extent that the checks or deposit slips mentioned above were signed, they were signed by Madison Financial's controller, Paul Castleberry, who was interviewed twice. Castleberry served as controller of Madison Financial from mid 1983 until he was terminated in June 1985.¹⁸ This was Castleberry's first full-time job after college; while in night school at the University of Little Rock he had worked at Savers' Savings as an accounting clerk.¹⁹ Among his duties, Castleberry wrote checks for Madison Financial.²⁰ He says record-keeping at Madison Guaranty was "kind of sloppy" when he arrived.²¹

Q. And could you tell me what the books of Madison Financial were like when you started.

A. When I first started, they were kind of shoebox-like. They were disorganized, not really any type of, per se, records kept. It was a real mess.²²

McDougal and John Latham (Madison Guaranty's CEO) often gave Castleberry quite detailed instructions. When Castleberry started to organize Madison Financial's records, they helped Castleberry set up the accounts

16 Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 1.

17 Randolph interview, Mar. 9, 1995, at 24:21-27:10.

18 Paul Castleberry interview, Apr. 26, 1994, at 1. Greg Young replaced him in the spring of 1985. *Id.* at 4. Young also was interviewed twice.

19 *Id.* at 1.

20 Latham and Young also wrote some checks. Castleberry interview, Nov. 2, 1995, at 9-10.

21 Castleberry interview, Apr. 26, 1994, at 18.

22 Castleberry interview, Nov. 2, 1995, at 6.

because Castleberry had no experience with a real estate subsidiary.²³ Then, as invoices came in, most of the time McDougal and to a lesser extent Latham would tell Castleberry to which accounts he should post the transaction.²⁴

When an invoice for a payable came in, McDougal or Latham would approve it, sometimes just orally.²⁵ Castleberry would cut the check, post the transaction to the accounts and file the invoice.²⁶ Sometimes McDougal or Latham would ask Castleberry to cut a check without presenting him with an invoice; Castleberry cannot remember how often this happened.²⁷

After I was there - I will say this - I don't know where the records are now, but when I was there, the records were right. Because I kept up with, like I said, everything . . . I had a essentially lots - there might be sometime or something that Latham or McDougal might say I need - write me a check for \$100 - we've gotta pay some advertising - I gotta pay somebody to do some work - labor - some contract labor or something - there wouldn't - you wouldn't get an invoice made for something like that - but, if it came from a corporation or something - there was generally - there was an invoice. Now, I can't tell you whether that invoice was legit or not. I don't know that. But, we had - when I was there, I tried to do my best to see that we had an invoice for anything, but . . .²⁸

Castleberry was specifically asked about the payments to West-Ark summarized above.²⁹ He confirmed that he signed the checks but emphasized that he did so at the instance of Latham.³⁰ Castleberry could not say why West-Ark had been hired, how its contracts were negotiated, whether the price was fair or whether the work was performed. McDougal and Latham supervised such matters.³¹

23 *Id.* at 6-7.

24 *Id.* at 35-36. This conflicts with McDougal's statement that he was not a hands-on manager when it came to the paperwork. See Preliminary Report at 45-47.

25 Castleberry Interview, Nov. 2, 1995, at 11.

26 *Id.* at 11-13.

27 *Id.* at 13-14.

28 Castleberry Interview, Apr. 26, 1994, at 18.

29 Castleberry Interview, Nov. 2, 1995, at 14-26, 36-38.

30 *Id.*

31 *Id.* at 23-26.

b. Transaction 3A (chart 9), November 1984.

As chart 9 illustrates, Madison Financial sent \$12,650 to West-Ark, West-Ark sent \$12,000 to Flowerwood Farms, and Flowerwood Farms sent \$12,000 to Whitewater. As chart 7 illustrates, Whitewater used the \$12,000 to make part of an \$18,000 payment to Citizens Bank of Flippin (transaction 3B contributed the rest of the money).

From Madison Financial's point of view, transaction 3A is similar to transaction 1, except that the available documentation is more complete. Once again, Madison Financial sent two checks to West-Ark.³² One check, dated October 23, 1984, was for \$6,000; the other check, dated October 30, 1984, was for \$6,650. Once again, neither check states its purpose.

Both payments were posted to Madison Financial's general ledger but to a different account: account 1600, "Houses at M.C." (Maple Creek Farms).³³ This time check stubs and West-Ark invoices were located. The check stubs confirm the payee (West-Ark) as well as the date, check number, amount and general ledger coding for each payment.³⁴ A single West-Ark invoice for \$12,650, dated September 12, 1984, supports both payments.³⁵ Addressed to Madison Financial, the invoice bears the description "2900 bales of straw seed, fertilizer and preparation of sites application [\$]8980.00" and "brush hogging and trimming [\$]3670.00."³⁶

West-Ark performed construction work for Madison Financial at several projects, including Maple Creek.³⁷ Again, Paul Castleberry could shed no light on the bona fides of these transactions; McDougal and Latham supervised the work.³⁸

32 IC15207, IC25598. Both were signed by Paul Castleberry. Castleberry Interview, Nov. 2, 1995, at 20.

33 RTCKC44321. Castleberry Interview, Nov. 2, 1995, at 21-22.

34 RTCKC44322, RTCKC44323.

35 RTCKC44324. The invoice was a generic form, on which "West-Ark" was typed, but that is consistent with West-Ark's style of operation.

36 *Id.* Brush or bush hogging is mowing a field using a mower hooked to a tractor. Castleberry Interview, Nov. 2, 1995, at 23.

37 Randolph Interview, Mar. 9, 1995, at 26:13-21.

38 Castleberry Interview, Nov. 2, 1995, at 23-25.

c. Analysis.

As a plaintiff, the RTC would bear the burden of proof in any case it filed. In particular, the RTC could not file a complaint unless it could certify that

the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . .³⁹

Ten years after the fact, not all of the West-Ark documentation can be located. Even so, the evidence does not provide any substantial grounds to challenge the performance or pricing of West-Ark's services, or any substantial basis for claiming that the transactions caused damage to Madison Guaranty.⁴⁰ Therefore, the evidence does not support the assertion of a cause of action against anyone based on transaction 1 or transaction 3A.⁴¹

2. Transactions benefiting Madison Marketing.

Madison Marketing placed advertisements for McDougal-controlled entities in return for a 15 percent fee; the documents underlying the Madison Marketing invoices are consistent with this understanding.⁴² Madison Marketing was owned by Susan McDougal, who operated it out of Madison Guaranty's Little Rock office, in which Castleberry worked.⁴³ Transactions 3B and 9 involve payments to Madison Marketing.

a. Transaction 3B (chart 10), November 1984.

As chart 10 illustrates, Madison Guaranty and Madison Financial made eight payments to Madison Marketing totaling \$68,574; and Madison Marketing sent \$5,566 to Whitewater. As chart 7 illustrates, Whitewater used the \$5,566

39 Fed. R. Civ. P. 11(b)(3).

40 Given the amounts at issue, further investigation in an attempt to determine whether these construction services were reasonably priced would seem to be a waste of money. Therefore, it is not recommended.

41 This does not necessarily mean that the transactions have been proved legitimate or that the evidence exonerates anyone; it simply means that no basis has been found to sue anyone. This comment applies with equal force to transactions 3B, 6 and 9 (discussed below).

42 Preliminary Report at 78-79; PMS0477 (1986 FHLBB Report of Examination); Castleberry interview, Nov. 2, 1995, at 26-30.

43 Castleberry interview, Nov. 2, 1995, at 26-27. Castleberry does not know who kept Madison Marketing's books; he did not. *Id.* at 28-30.

to fund the rest of a \$18,000 payment to Citizens Bank of Flippin (as noted above, \$12,000 came from transaction 3A).

In November 1984, money left Madison Guaranty and Madison Financial in the form of eight payments to Madison Marketing: \$7,154, \$24,156 and \$1,607 on November 2, 1984; \$5,932 on November 9, 1984; \$3,929 on November 13, 1984; \$60 on November 18, 1984; and \$25,361 and \$375 on November 19, 1984.⁴⁴

Transaction documents were located for two of the payments: the \$1,607 payment on November 2, 1984 and the \$5,932 payment on November 9, 1984.⁴⁵ Deposit slips were located but neither deposit slip was signed, nor did either state the purpose of the transaction.⁴⁶ In addition, check stubs, Madison Marketing invoices and supporting documentation were located:

For the \$1,607 transaction, the Madison Marketing invoice lists three vendors: a radio station and two publications.⁴⁷ Backing up the Madison Marketing invoice is an invoice from each vendor.⁴⁸ In each case, the total on the vendor's invoices plus 15 percent equals the amount shown on the Madison Marketing invoice. All four documents state that the services relate to the Green Tree Farms project, not Fair Oaks.⁴⁹

For the \$5,932 transaction, the Madison Financial check stub has a manual notation, "#1116 N/R - Fairview per J.M."⁵⁰ The Madison Marketing invoice lists four third-party vendors. Invoices from three of the four (all radio stations) are attached; each relates to Green Tree Farms.⁵¹ The missing documentation relates to "Sherwin-Williams \$114.60."⁵²

44 IC16408, IC16454, IC16506, IC16610, IC25441, IC25529, IC25571.

45 Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 1-2.

46 IC16396; IC25583. Bank statements for Madison Marketing's account are not available for November 1984.

47 RTCKC44332. These entities have no known ties to the McDougals. The Madison Marketing invoice supporting this payment is dated October 25, 1987. The year appears to be in error; the underlying invoices are all dated in 1984.

48 RTCKC44333-35.

49 RTCKC44332-35.

50 RTCKC44326. The "J.M." stands for Jim McDougal. As noted above, Jim McDougal directed that this payment be posted to the general ledger in this manner.

51 RTCKC44327-30.

52 RTCKC44327.

Both payments were posted to Madison Financial's general ledger to account 1116: "Notes Receive - Fairview."⁵³ (The account's name was later changed to "Fair Oaks.") Posting a payable to a note receivable account is unusual. Castleberry explained that he charged the \$5,932 payable to this account because McDougal told him to do so. So far as Castleberry understood it, McDougal's theory was that

there was a note -- or that there was to be a note that -- in which one of the partners -- or a partner owned that note, as far as would make payments on that note once the development was completed.⁵⁴

Put another way, McDougal's theory for not expensing these payables was that ultimately the partner would reimburse Fairview for the work performed by Madison Marketing; therefore, in the final analysis, Madison Financial would not be out of pocket.⁵⁵ On this theory, the disbursements would not be treated as expenses. Therefore, they would not decrease Madison Financial's net income (or, as shall be seen below, McDougal's and Latham's bonuses).

b. Transaction 9 (chart 13), October-November 1985.

As chart 13 illustrates, Madison Guaranty and Madison Financial made three payments totaling \$112,872 to Madison Marketing; and Madison Marketing sent \$7,500 to Whitewater. As chart 7 illustrates, Whitewater used the \$7,500 to make a \$7,322 payment to Security Bank of Paragould.

Transaction 9 resembles transaction 3B. Money left Madison Guaranty and Madison Financial in the form of three deposits into Madison Marketing: \$48,183 and \$37,579 referenced on a deposit slip dated October 25, 1985; and \$27,110 referenced on a deposit slip dated October 29, 1985.⁵⁶ The deposit slips are unsigned and do not state the purpose of the deposits, although they do list the entities on behalf of which the money ostensibly was paid.⁵⁷

53 RTCKC44325.

54 Castleberry Interview, Nov. 2, 1995, at 31-33. Many other disbursements that appear to be payables also were posted to this account, e.g., Southwestern Bell, \$84.83, Coca-Cola Bottling Co., \$76.50, Rabbit Feed Store, \$67.40. RTCKC44325.

55 Castleberry Interview, Nov. 2, 1995, at 32-35. Castleberry has no idea whether there were such notes, or whether they eventually were paid; he simply followed McDougal's instructions. *Id.*

56 IC06632, IC07427.

57 IC06632, IC07427.

Additional documentation has been located for the last two of these payments.⁵⁸ For both, the documents include entries into Madison Financial's general ledger, check stubs and Madison Marketing invoices with underlying third-party vendor statements.

The payment of \$37,579 was recorded into Madison Financial's general ledger in account 2300--"Res. For Dev.--Maple Crk Farms."⁵⁹ This type of account accumulates capitalized direct project costs for Maple Creek Farms. This coding is consistent with Madison Marketing's invoice for these costs.⁶⁰ Madison Marketing vendor receipts for this invoice, while not complete, are generally consistent with other Madison Marketing payments, including the addition of a 15 percent mark-up on these costs.⁶¹ These expenses covered television, radio and print advertising for the project.⁶²

The payment of \$27,110 is supported by similar documentation. This payment is distributed on Madison Financial's general ledger in many places: reserve for development accounts for Eden Park (account 2306 for \$7,439.35) and Lake Faircrest (account 2307 for \$12,914.08); and various advertising expense accounts for Fair Oaks (account 6691-3 for \$4,602.36), Brittany Point (account 6691-4 for \$71.24) and Timberline (account 6691-5 for \$2,082.85).⁶³ The underlying invoice and vendor support generally appears consistent with these classifications. The documentation is of the same type and detail as the other Madison Marketing payments.⁶⁴

The checks for this transaction, unlike transactions 1, 3A and 3B, were signed by Greg Young. In mid 1985, Greg Young replaced Paul Castleberry, who was fired.⁶⁵ Young, an accountant, had worked for the firms now known

58 Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 2.

59 RTCKC44355.

60 RTCKC44403.

61 RTCKC44404-26.

62 Whether these types of costs should be capitalized or expensed on Madison Financial's books is irrelevant for purposes of this analysis.

63 RTCKC44356-57.

64 RTCKC44358-400.

65 Castleberry Interview, Apr. 26, 1994, at 4, 19-20. Castleberry was told he "wasn't the right type individual for their organization"; the firing came as a shock. *Id.* at 19-20. Castleberry once had refused to make an accounting entry that Latham wanted. This occurred within six months of Castleberry's firing, but Castleberry does not know if the incident led to his firing. *Id.* at 21-25. Young, who was Castleberry's boss and had started to handle some of

(continued...)

as KPMG Peat Marwick and Deloitte & Touche before joining Madison Guaranty in October 1984.⁶⁶ Young continued to work at Madison Guaranty until July 1988.⁶⁷

In general, Young claims that accounts payable requests had backup information and supporting documentation, although on occasion McDougal would make oral requests for checks and supply some form of invoice later.⁶⁸ These oral requests generally pertained to payables to West-Ark, Madison Marketing or other related entities.⁶⁹ Young understood that "all of the advertising dollars ran through Madison Marketing as the agent or contractor or whatever it was. They got an agency fee for placing all this advertising."⁷⁰ He does not think that Madison Marketing actually produced the advertisements itself.⁷¹

c. Analysis.

The Madison Financial payments to Madison Marketing appear adequately documented. While backup documentation was not available for all payments, the files where available include third-party documentation justifying the amount and nature of the expenses. Therefore, the evidence does not support the assertion of any cause of action based on the theory that these expenditures themselves damaged Madison Guaranty.⁷²

Nonetheless, Madison Marketing's entitlement to the 15 percent markup might be questioned on the theory that these funds should have gone to Madison Guaranty rather than to an entity owned by Susan McDougal personally. In situations such as this, where a person with a close connection to a corporation (a "corporate insider") profits from business dealings with that

65(...continued)

Castleberry's responsibilities before Castleberry left, does not know why Castleberry was fired. Young Interview, Nov. 2, 1995, at 6-9.

66 Young Interview, May 13, 1994, at 1-2; Young Interview, Nov. 2, 1995, at 4-6.

67 Young Interview, May 13, 1994, at 2.

68 *Id.*

69 *Id.*

70 Young Interview, Nov. 2, 1995, at 10-11.

71 *Id.*

72 To the extent that these expenditures were posted to "notes receivable" accounts, there may be an accounting issue. That, however, seems better addressed as an aspect of McDougal's bonuses, which are discussed below.

corporation, the law asks several questions. The first is whether the corporate insider should even operate a business that the corporation itself might own. The second is whether the particular business arrangements between the corporate insider and the corporation violate the corporate insider's fiduciary duties to the corporation.

The first question is analyzed under the "corporate opportunity" doctrine. This doctrine, which Arkansas recognizes, holds:

The law imposes a high standard of conduct upon an officer or director of a corporation, predicated upon the fact that he has voluntarily accepted a position of trust and has assumed the control of property of others. . . . Such a person occupies a fiduciary relation to his corporation and "may not acquire, in opposition to the corporation, property in which the corporation has an interest or tangible expectancy or which is essential to its existence." This doctrine of corporate opportunity is but one phase of the rule of undivided loyalty on the part of corporate fiduciaries. It does not preclude a corporate fiduciary from engaging in a distinct enterprise of the same general class of business as that which his corporation is engaged, so long as he acts in good faith.⁷³

The corporate opportunity doctrine is principally a rule of disclosure. A corporate fiduciary whose activities are known to and accepted by the corporation will not run afoul of the doctrine.⁷⁴ There seems to have been no secret as to Susan McDougal's ownership of Madison Marketing; for example, Castleberry and Young both knew it.

Even if the McDougals did not disclose their interest to other directors, the corporate opportunity doctrine does not preclude a corporate fiduciary from engaging in a distinct enterprise of the same general class of business as that in which his corporation is engaged so long as he acts in good faith.⁷⁵ Courts frequently employ a "line of business test" to determine whether a given opportunity belonged to the corporation. Under this test, the corporate opportunity doctrine typically is invoked where there have been egregious

73 *Raines v. Toney*, 228 Ark. 1170, 1179, 313 S.W.2d 802, 808 (1958) (citations omitted). See also *Taylor v. Terry*, 279 Ark. 97, 98-99, 649 S.W.2d 392, 392-93 (1983).

74 3 William Meade Fletcher, *Cyclopedia of the Law of Private Corporations* § 862, at 304 (rev. ed. 1994).

75 *Raines v. Toney*, 228 Ark. at 1179, 313 S.W.2d at 808; see also *Taylor v. Terry*, 279 Ark. at 98-99, 649 S.W.2d at 392-93.

attempts to spirit business away from a corporation.⁷⁶ The doctrine does not typically reach a business relationship with a vendor in another line of business. An advertising agency is not a business "essential to [the] existence" of a savings and loan, nor is an advertising agency "of the same general class of business as that [in] which" a savings and loan or its real estate service corporation is engaged. Therefore, it seems unlikely that Madison Marketing took an opportunity that belonged to Madison Guaranty or Madison Financial.⁷⁷

The second question is whether, even if Susan McDougal could properly own Madison Marketing, her status as a corporate insider made the particular arrangement between Madison Guaranty and Madison Marketing improper. The general rule is that corporate insiders may not profit improperly from their relationship with the corporation. Therefore,

a director must account to the corporation or the shareholders for any profits made by the director out of corporate transactions, where the director either concealed or did not disclose the extent to which he or she was making a profit out of the transaction.⁷⁸

This rule does not mean, however, that a director or other insider is forbidden from having an interest in a contract that is fair and in the interest of the corporation. Instead, it means that the RTC would have the burden of proving that the McDougals tried to conceal their interest in Madison Marketing; if satisfied, the burden would shift to the McDougals to establish that the contract was fair and made in good faith.⁷⁹

Even if the RTC could prove secrecy, the McDougals might well meet their burden. Madison Marketing received no more than the going rate of 15 percent; had an independently owned advertising agency placed the

76 This is true of both *Raines* and *Taylor*. In *Raines*, for example, the defendant/appellant attempted to take away all the business of the corporation to which he owed a fiduciary duty and transfer all that business to a partnership he had set up.

77 An additional distinguishing factor between the typical corporate opportunity case and the facts presented here is the real question here of whether Madison Guaranty was deprived of the opportunity. If Madison Guaranty could have chosen at any time to place its own advertisements, then the opportunity was never lost to it.

78 Fletcher, *supra*, § 884, at 363.

79 Fletcher, *supra*, § 884.70, at 376-77; see also *Home Bros., Inc. v. Ray Lewis Corp.*, 292 Ark. 477, 481, 731 S.W.2d 190, 193 (1987) (recognizing that when contracts between a corporation and its directors are involved, "the burden is upon those claiming under them to prove that they are made in good faith and fair to the corporation").

advertisements, it would have charged a similar commission.⁸⁰ The 1986 FHLBB Report of examination points out that "[t]he actual work of advertising, such as the design and production of commercials and providing air time or newspaper space, appears to be performed by others."⁸¹ That might have been true, however, even if an independently owned advertising agency had handled the job. Therefore, unless Madison Marketing manifestly fell down on the job, it seems doubtful that the RTC could demonstrate that the arrangement was unfair to Madison Guaranty. This issue aside, there is no basis to question the expenditures on advertising, at least in the transactions for which documents can be located.

3. Transaction benefiting Bill Henley: Transaction 6 (chart 11), January 1985.

As chart 11 illustrates, Madison Financial paid \$46,000 to Madison Real Estate; Madison Real Estate paid \$46,000 to Bill Henley; Bill Henley paid \$28,500 to Flowerwood Farms; and Flowerwood Farms paid \$1,000 to Whitewater. As chart 7 illustrates, Whitewater used the \$1,000 to pay \$1,000 to Citizens Bank of Flippin.

Bill Henley (who is one of Susan McDougal's brothers) worked as a commissioned real estate salesman for Madison Financial. The 1986 FHLBB Report of Examination indicates Bill Henley was paid \$427,683 in commissions between 1983 and 1986. According to this Report, "a substantial portion of these funds were advances against commissions to be earned on future land sales."⁸² Transaction 6 involves one payment of commissions to Bill Henley.

In January 1985, money left Madison Financial in the form of a check for \$46,000 to Madison Real Estate.⁸³ Madison Real Estate paid \$46,000 to Bill Henley. The \$46,000 reached Bill Henley's account on January 10, the day before the check to Henley and the check from Madison Financial were posted to Madison Real Estate's account; both were posted on January 11.⁸⁴

80 A number of the invoices from television stations explicitly state the gross billing, the "agency commission" and the net amount due. E.g., RTCKC44408-20.

81 PMS0477.

82 PMS0476.

83 The Madison Financial check to Madison Real Estate is dated January 9, 1985 and was signed by Paul Castleberry. IC17929. A deposit slip dated January 10, also signed by Castleberry, deposited the check into Madison Real Estate's account. IC17776. The deposit was posted to Madison Real Estate's account on January 11. IC01568. The statement was sent to Madison Real Estate c/o Castleberry.

84 IC01568, IC17837. See generally Castleberry Interview, Nov. 2, 1995, at 39-47.

There is no backup documentation (accounts payable folder or supporting documentation) for this transaction.⁸⁵ There is, however, an entry into Madison Financial's general ledger for \$46,000, coded into account 2016, "Accts. Pay. - Comm. To B.H."⁸⁶ This entry creates a debit balance of \$46,650.68, which appears to be an amount due (receivable) from Bill Henley. This suggests that Madison Financial prepaid commissions to Bill Henley.⁸⁷

Paul Castleberry said that commissions were prepaid but not by more than a few days. He said that sometimes Jim McDougal would direct him to pay commissions to Henley. Typically this would occur only if a parcel had been sold but the paperwork had not yet been arrived at the office.⁸⁸ So far as Castleberry knew, this payment was not a disguised loan to Henley. Instead, he understood that a sale had been made but the paperwork had not yet arrived.⁸⁹

There might be liability if the underlying sales were made to insiders on uneconomical terms and therefore were not bona fide.⁹⁰ Such a theory would require fairly elaborate proof as to the terms of various transactions and the rationale for the transactions. Even if the commissions were proved wrongful, however, the commissions could not be recovered from their recipient, Bill Henley, because he has been released.⁹¹

85 Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 2.

86 RTCKC44338. There is no voucher backing up the general ledger entry. Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 2.

87 RTCKC44338.

88 Castleberry Interview, Nov. 2, 1995, at 41-47.

89 *Id.* at 45.

90 See 1986 FHLBB Report of Examination, PMS0477.

91 Between 1987 and 1989, Bill Henley was adverse to Madison Guaranty and Madison Financial in six actions, at least one of which pertained to his real estate commissions. On April 28, 1989, Bill Henley, Glenda Henley, Madison Guaranty and Madison Financial executed a global Settlement Agreement resolving all six actions. Among the six actions was one that sought commissions. *Billy Henley v. Madison Financial Corporation, et al.*, No. 87-422 (Union City. Cir. Ct.), *after removal*, No. 89-1040 (W.D. Ark.). The mutual release attached to the Settlement Agreement provided for the dismissal with prejudice of this action and the release by all parties of "any and all claims . . . known or unknown . . . relating to" this action (as well as the other five actions). Settlement Agreement at 19, 25-26. These releases would bar the RTC from suing Henley even if the commissions were proved wrongful.

4. Transactions benefiting the McDougals (charts 12, 12A and 14).

There are four such transactions, three benefiting Jim McDougal and one benefiting Susan McDougal. Madison Financial paid Jim McDougal \$20,000 in February 1985, \$30,000 in April 1985 and \$75,949 in January 1986; all three payments are deemed bonuses by what purport to be board minutes. Through the fourth transaction, Madison Guaranty may indirectly have financed a loan to Susan McDougal of \$300,000 made by Capital Management Services, Inc. in April 1986.

The \$20,000 bonus and the \$30,000 bonus are not part of the nine transactions discussed in part VII of the Preliminary Report, but the \$30,000 bonus was discussed in part VIII because it was made payable to Whitewater. The \$75,949 bonus and the \$300,000 loan are part of transaction 8.

a. The \$30,000 bonus paid in April 1985 (chart 14).

As chart 14 illustrates, Madison Financial paid \$30,000 to Whitewater. The money cured an overdraft created by Whitewater's \$30,000 payment to Earth Movers, Inc. Earth Movers had used Whitewater's check to buy a cashier's check for \$30,000 that was sent to Senator Fulbright, who accepted it as the first of two payments for a parcel of land west of Little Rock that he had agreed to sell to Earth Movers.

The Preliminary Report discussed this transaction at some length.⁹² New interviews and newly obtained accounting documents help augment the discussion in the Preliminary Report, particularly with respect to the characterization of Madison Financial's \$30,000 payment to Whitewater as a bonus.

Madison Financial's minutes: To understand the evidence as to this putative bonus, it is necessary to understand the history of the minutes that purport to authorize it. As noted in the Preliminary Report, these minutes are of dubious authenticity, were created many months after the fact and have been found in several inconsistent versions. According to Patricia Heritage, who prepared the minutes under John Latham's direction, the Madison Financial board did not hold formal meetings, but the minutes were prepared as if a

92 Preliminary Report at 98-101.

meeting had been held.⁹³ One of the directors, Greg Young, did not know he was a director.⁹⁴

Latham directed Heritage to prepare the minutes in anticipation of the FHLBB examination that began in March 1986.⁹⁵ Heritage started creating minutes covering putative meetings held from January 1985 onward. The work of drafting these minutes began in late February 1986, because the examiners were expected to arrive on March 1, 1986.⁹⁶ Latham instructed Heritage "that the things that needed to be covered were any bonuses that the corporation had authorized top officers, various other things."⁹⁷ Heritage began to research corporate records to see what Madison Financial had done.⁹⁸ She also checked with Greg Young--"he was CFO, so he would have known when people were paid bonuses."⁹⁹ After taking these steps, she prepared draft minutes for Latham's review. Latham frequently made changes to the drafts.¹⁰⁰ When the minutes were completed, Latham signed the minutes himself but Sue Strayhorn probably signed Jim McDougal's name.¹⁰¹ The FHLBB examiners asked to see the minutes soon after their arrival, but they

93 Hentage Deposition, Feb. 27, 1991, at 12-14; IG Ex. III-149, at 12-14. Hentage worked at the time as John Latham's assistant. She later completed law school at night, graduating with honors from the University of Arkansas at Little Rock. After that she worked for a time for the Rose Law Firm in its labor law department. Hentage Deposition at 4-8; IG Ex. III-130, at 4-8. As of 1994, she worked as a deputy city attorney for the City of Little Rock. IG Ex. III-152, at 1.

94 IG Ex. III-149, at 15. Young did not learn of his status as a director until after the FHLBB examination that started in March 1986. He said, "I've never attended a Madison Corporation Board of Directors' meeting, ever." Young Interview, Nov. 2, 1995, at 15-17.

95 IG Ex. III-149, at 13-14.

96 IG Ex. III-151, at 6 (RIC038825); III-152, at 2. See also Young Interview, Nov. 2, 1995, at 20-21.

97 *Id.* at 15. Compare IG Ex. III-152, at 2, where Heritage says that Latham's instructions were to focus on "major decisions"--investments in major developments and bonuses.

98 IG Ex. III-152, at 3.

99 IG Ex. III-149 at 15. See also IG Ex. III-151, which consists of notes of interviews of Hentage from 1986, 1987 and 1990.

100 IG Ex. III-152, at 2.

101 IG Ex. III-151, at 6; III-152, at 3. Heritage added that McDougal would allow a lot of people to sign his name, but Latham was very particular about it and would not let anyone sign his name. IG Ex. III-151, at 6. Hentage also told how McDougal once asked her to sign his name to a deed, explaining that it was a waste of his time to be signing documents such as this. IG Ex. III-152, at 3.

never asked Heritage when the minutes had been prepared or by whom.¹⁰² For their part, McDougal and Strayhorn moved from Madison Guaranty's offices out to Maple Creek just before the examination began. Strayhorn testified to this in 1988:

Q. Do you know why he moved?

A. Yes.

Q. Why?

A. He did not want to be accessible to the examiners to have to answer any questions at that time.¹⁰³

The bonus plan for 1985: The first mention of bonuses for 1985 appears in the minutes for a board meeting supposedly held on January 21, 1985. There is a draft of these minutes¹⁰⁴ as well as a final signed version.¹⁰⁵ The final signed version reads:

RESOLVED, that the Corporation pay to the following persons salaries and bonuses in the amounts set forth below for the fiscal year beginning January 1, 1985: Jim McDougal - \$100,000, plus 10% of the net profits . . .¹⁰⁶

The \$20,000 payment: The next mention of a bonus for McDougal appears in minutes dated February 7, 1985. Again, there is a draft plus a signed final version.¹⁰⁷ The draft awards McDougal \$20,000 "in recognition of

102 IG Ex. III-152, at 3.

103 Reporter's Transcript of Trial of *Seth Ward v. Madison Guaranty Savings and Loan Association*, No. 87-7580 (Pulaski Cty. Cir. Ct.), at 196-97. The Independent Counsel's indictment of McDougal charges that McDougal and his alleged co-conspirators structured transactions and generated fraudulent paperwork, particularly in late 1985 and early 1986, so as not to attract the attention of auditors and bank examiners and regulators. Indictment filed Aug. 17, 1995 in *United States v. James B. McDougal, et al.*, No. LR-CR-95-173 (E.D. Ark.) (hereinafter, "McDougal Indictment"), ¶ 10, at 7.

104 RTCKC37408-09.

105 IG Ex. III-50, at 1.

106 IG Ex. III-50, at 1. Young understood this to be McDougal's bonus arrangement for 1985. Young does not recall McDougal receiving any large bonuses in 1984, but Young did not start handling payroll until the end of 1984. Young Interview, Nov. 2, 1995, at 13-14.

107 The draft is RTCKC37420-21; the bonus provisions are handwritten in Patricia Hentage's handwriting. Young Interview, Nov. 2, 1995, at 17. The final version is RTCKC46950-51.

the high profits (\$391,000) earned by the Service Corporation."¹⁰⁸ The final version awards McDougal \$50,000 "in recognition of his work which allowed the Service Corporation to earn outstanding profits for the past two years."¹⁰⁹ Nevertheless, the payment actually made in February 1985 was \$20,000, not \$50,000, and it was accounted for as "salaries - executive."¹¹⁰

The \$30,000 payment: The next mention of a bonus for McDougal appears in the minutes dated April 17, 1985. There are several drafts of these minutes, each awarding McDougal \$30,000 but each containing a slightly different rationale.¹¹¹ In February 1986, Latham called Heritage from Colorado to instruct her to change the characterization of Jim McDougal's bonus by deleting the April 17, 1985 bonus of \$30,000 and increasing the February 1985 bonus from \$20,000 to \$50,000.¹¹² As noted above, the February 1985 minutes were changed in this fashion. Nonetheless, the \$30,000 was not deleted from the final version of the April 1985 minutes (signed only by Jim McDougal), which reads:

RESOLVED, that the Corporation pre-pay to Jim McDougal \$30,000 of his annual bonus in recognition of the profits of the prior year, and that said bonus is to be paid directly to Whitewater Development.¹¹³

108 RTCKC37420-21. This is the figure for 1984 profits, not 1985 profits, notwithstanding the provisions of the bonus program set forth in the January 21, 1985 minutes. See RTCKC37421; Young Interview, Nov. 2, 1995, at 18-19.

109 RTCKC46950-51. Young does not think McDougal was paid \$50,000 in one lump; instead, this represents the sum of the \$20,000 paid in February 1985 and the \$30,000 paid in April 1985 (discussed below). Young Interview, Nov. 2, 1995, at 20.

110 RTCKC44433 (general ledger as of Apr. 30, 1985); Young Interview, Nov. 2, 1995, at 31-32. Typically Latham, as opposed to McDougal, instructed Young on how to account for the bonuses. Young Interview, Nov. 2, 1995, at 17-18.

111 RTCKC37414 ("in recognition of the profits of the prior year and in anticipation of higher profits in 1985"); RTCKC 37419 ("~~his annual bonus of \$30,000 of his annual bonus in recognition of the profits of the prior year and in expectation of higher profits in 1986~~") (editing in original); RTCKC37415 ("\$30,000 of his annual bonus in recognition of the profits of the prior year ~~and in expectation of higher profits in 1986~~") (editing in original). Young says the handwriting on RTCKC37414 and 374129 is Patricia Hentage's except for the words "annual meeting," which appear to have been written by Sue Strayhorn. Young Interview, Nov. 2, 1995, at 24-25.

112 *Id.* at 8. Compare IG Ex. III-152, at 2, in which Hentage confirms the change from \$20,000 to \$50,000 but claims that Latham instructed her to have the minutes show the \$30,000 bonus was paid to Whitewater. See also Preliminary Report at 101.

113 CR0686 (signed by McDougal).

The check for this bonus was cut April 30, 1985 and was made payable to Whitewater. Greg Young explained:

Q. . . . To the best of your recollection, why did you prepare this check [the \$30,000 check to Whitewater, which Young signed]? Did someone ask you to do it?

A. John Latham told me to.

Q. And how did he explain what it was for?

A. Quote, "We need to get some money in Jim's hands."

Q. That's all he said?

A. Yes.

Q. Did he give you any sort of documentation --

A. No.

Q. -- to say what it was for?

A. No.

Q. Did you ever get any anything else from Latham explaining what the -- what the money was for?

A. No.¹¹⁴

. . . .

Q. Okay.

MR. WAGNER: Greg, you mentioned that John Latham mentioned that he needed to get some money in Jim McDougal's hands. Did he direct you to write it payable to Whitewater Development?

MR. YOUNG: Yes.

MR. ERICSON: Q: I take it it was not your idea to pay it to Whitewater?

114 Young Interview, Nov. 2, 1995, at 26.

A. . . Oh, no. I really didn't know what Whitewater was.¹¹⁵

Young cannot recall any other occasion in which Latham made a request such as "we need to get some money in somebody's hands."¹¹⁶

While the minutes justified the \$30,000 payment as a bonus, it, unlike the \$20,000 payment, was never accounted for in this way. Instead, it was accounted for in two different ways: first, as a consulting fee; and second, as a capitalized expense attributed to Maple Creek.

At first, Greg Young accounted for the \$30,000 as a consulting fee; his journal voucher dated April 30, 1985 (the date the check bears) reads, "pmt to Whitewater Dev. for consulting fee."¹¹⁷ Young says he did so at Latham's direction:

Q. Now, how would you have decided how to account for -- for this?

A. Because I asked John [Latham] what it was for.

Q. . . . And what did he say, to the best of your recollection?

A. Consulting fee.

Q. Did he provide any further detail?

A. Hmm-mm, no.¹¹⁸

Six months later, Latham directed Young to change the accounting for the \$30,000. This time, Young's journal voucher backed out the consulting fees and posted it to a "Reserve for Development, Maple Creek Farms account."¹¹⁹

115 *Id.* at 27.

116 *Id.*

117 RTCKC44441 (emphasis in original); the check is CR0264; the deposit slip is DKRT101144; the relevant page of the general ledger is RTCKC44437. Greg Young handled all the bonus payments in 1985 and 1986. Young Interview, Nov. 2, 1995, at 14, 25-26. Castleberry knew nothing about these documents. Castleberry Interview, Nov. 2, 1995, at 47-65.

118 Young Interview, Nov. 2, 1995, at 30.

119 RTCKC44441A; Young Interview, Nov. 2, 1995, at 34-37.

Young is unaware of any consulting or other services provided by Whitewater to any of Madison Financial's projects, including Maple Creek.¹²⁰ When asked why Latham would have sought to recharacterize this payment, Young answered:

Q. Greg, you mentioned that Mr. Latham's motivation for the entry might relate to avoiding having this hit the bottom line.

A. Yes.

Q. Why would that have been a motivation?

A. Because of bonuses. Jim's bonus was based on the profit of Madison Financial Corporation; John's bonus was based on net profit of Madison Guaranty after Madison Financial's profits were rolled into Madison Guaranty. So this meant \$3,000 for each of them, in essence.

Q. Did he express that explicitly?

A. No, no. No. But it didn't take a rocket scientist to figure that out.¹²¹

b. Transaction 8 (charts 12 and 12A), April 1985-April 1986.

As chart 12 illustrates, this transaction occurred over the space of a year. The top half of chart 12 covers 1985; the bottom half covers 1986.

In April 1985, Stephens Security Bank loaned \$135,000 to Flowerwood Farms; and Flowerwood Farms paid \$24,456 to Whitewater. As chart 7 illustrates, Whitewater used this \$24,456 to fund most of a \$25,000 payment to Chris Wade's Ozarks Realty Company.

In 1986, the loan from Stephens Security Bank was repaid in two installments, one in January 1986 and the other in April 1986.¹²² Both payments have connections to Madison Guaranty.

¹²⁰ Young Interview, Nov. 2, 1995, at 35-36. Young said as much to auditors from KPMG Peat Marwick when they questioned the recharacterization during an audit conducted in 1987. PM000003121; Young Interview at 38-39.

¹²¹ Young Interview, Nov. 2, 1995, at 37. Latham and McDougal each had bonus arrangements awarding them 10 percent of net profits.

¹²² Because money is fungible, one cannot say which of these funded the \$24,456; either, standing alone, was sufficient to do so. See Preliminary Report at 84-86.

In January 1986, Madison Financial paid a bonus of \$75,949 to Jim McDougal; and McDougal used \$40,000 of that money to repay a portion of Flowerwood Farms' loan from Stephens Security Bank. In April 1986, Madison Guaranty loaned \$825,000 to Dean Paul, Ltd. Of this \$825,000, \$502,000 went to David Hale's Capital Management Services, Inc., which loaned \$300,000 to Susan McDougal dba Master Marketing.¹²³ Of this \$300,000, \$111,524 went to retire the remainder of Flowerwood Farms' loan from Stephens Security Bank.

i. The \$75,949 bonus paid to Jim McDougal in January 1986.

Part of the Stephens Security Bank loan was repaid in January 1986 out of the McDougals' joint account at Madison Guaranty. The McDougals' account would not have had the funds needed to make this payment but for a payment of \$75,949 that Jim McDougal received on January 6, 1986 from Madison Financial.

The check, dated January 6, 1986, from Madison Financial to Jim McDougal does not state a purpose for the transaction.¹²⁴ The check stub, general ledger entries and Jim McDougal's 1986 W-2 wage statement all state that the payment was a bonus.¹²⁵ The check stub is dated January 7, 1986 and indicates the disbursement was "Jim's Bonus."¹²⁶ The December 31, 1985 Madison Financial general ledger (a printout run January 14, 1986) has an entry for \$78,952 posted to account 6012, "Bonus Expense," bearing the description "Dec 31 85 Jim's Bonus 10%."¹²⁷ The \$3,003 difference between the \$78,952 posted in the general ledger and the \$75,949 paid to McDougal is reconciled on McDougal's 1986 W-2 wage statement, which deems this amount "social security tax withheld."¹²⁸

As summarized above, Madison Financial purported minutes for January 1985 state that McDougal had a 10 percent bonus arrangement with Madison

123 The Preliminary Report did not lay out the connection between Madison Guaranty, Dean Paul, Ltd. and Capital Management Services, Ltd. That was the subject of another part of this investigation. See chart 12A for a depiction of the connection.

124 IC42743. This check was signed by Greg Young, who had replaced Paul Castleberry.

125 Young also confirms this. Young Interview, Nov. 2, 1995, at 39.

126 RTCKC44345.

127 RTCKC44350.

128 RTCKC44352. Young verified the withholding. Young Interview, Nov. 2, 1995, at 42.

Financial.¹²⁹ Even if that is assumed to be true, it is not clear that the bonus was properly calculated. Assume that the "10%" referenced in the general ledger means "10 percent of Madison Financial's net profits." If so, the operative question is whether the amount paid was 10 percent of Madison Financial's net profits.¹³⁰ The answer is "no."

No audited financial statement states that Madison Financial had a net income of \$789,520 (or anything like that) in 1985.¹³¹ For 1985, two sets of audited financial statements were prepared for Madison Financial. The first, prepared by Frost & Company and dated February 17, 1986, states that Madison Financial's net income for 1985 was \$323,960.¹³² The second, prepared by Peat Marwick in May 1987, states that Madison Financial had no net income for 1985 and instead lost \$2.1 million.¹³³ Neither set of financial statements supports the bonus, but neither was available as of January 6, 1986, the date by which the bonus was paid.¹³⁴

129 IG Ex. III-50, at 1. As described above, these minutes, like all the Madison Financial minutes dated after December 1984, are of questionable authenticity, as they were drawn up long after the fact.

130 Whether it means before taxes or after taxes is of no consequence, as Madison Financial was not accruing income taxes during this period.

131 Young confirms that the bonus was calculated using unaudited numbers. Young Interview, Nov. 2, 1995, at 39-41.

132 MG0001621; RLF1 46529. The financial statement is confusing because it mislabels as "1984" the second page of a two-page chart showing Madison Financial's net income for 1985. Nevertheless, a careful examination of the financial statements as a whole show that the chart contains 1985 numbers. The chart's numbers are taken from and can be traced back to 1985 numbers contained elsewhere in the statements; these numbers differ substantially from 1984 numbers. For example, "interest on loans" is \$6,202,526 on MG0001620; that number and the comparable number for 1984 (\$2,134,279) both appear on MG0001600.

In 1988, Madison Guaranty sued Frost & Company, alleging that its audits for 1984 and 1985 had overstated net income and disguised Madison Guaranty's insolvency. The Frost & Company action originally was styled *Madison Guaranty Savings & Loan Association, et al. v. Frost & Company*, No. 88-1193 (Pulaski Cty. Cir. Ct.). After Madison Guaranty failed, the action was removed to United States District Court, and the Federal Deposit Insurance Corporation was substituted for the plaintiffs. The action then was styled *FDIC v. Frost & Company*, No. LR-C-89-0216 (E.D. Ark.). Later still the RTC was substituted for the FDIC, and the case became *RTC v. Frost & Company*, under the same docket number. Hereinafter, the case will be referred to as "*RTC v. Frost & Co.*"

133 Consolidated Financial Statements and Consolidating Schedules for Madison Guaranty Savings and Loan Association and Subsidiary, Dec. 31, 1986, June 30, 1986 and Dec. 31, 1985, Schedule 2.

134 Young paid the bonus this early, before receipt of audited financial statements, because Latham instructed him to do so. Young Interview, Nov. 2, 1995, at 39-41.

Even if Madison Financial had earned (or reasonably was believed to have earned) net income sufficient to justify a bonus of \$75,949, there would be an issue as to whether the bonus had already been paid in part. As detailed above and in the Preliminary Report, McDougal received \$20,000 in February 1985 and \$30,000 in April 1985. The putative rationale for each is ambiguous.

The February 1985 minutes tie the \$20,000 to profits "for the past two years," perhaps suggesting that it is not a prepayment of the 1985 bonus.¹³⁵ In contrast, the April 1985 minutes state that "the Corporation pre-pay to Jim McDougal \$30,000 of his annual bonus in recognition of the profits of the prior year, and that said bonus is to be paid directly to Whitewater Development."¹³⁶ It is not clear what it means to "pre-pay" a bonus "in recognition of the profits of the prior year."¹³⁷ If this was a payment on account of 1984 profits, it cannot be justified by a plan that starts with fiscal year 1985. If, instead, this is a prepayment of McDougal's 1985 bonus, then it should have been subtracted from the payment he received in January 1986. Young says he never thought of this at the time and would be reluctant to take a position on the issue today because he does not know why McDougal was paid the \$20,000 or the \$30,000.¹³⁸

Given these facts, the question becomes whether any of the following acts amounts to intentional wrongdoing:

- o Paying and accepting payment of the bonus without waiting for the results of the annual audit.
- o Failing to repay any unearned portion of the bonus.

Not waiting for the audit. The propriety of calculating and paying a bonus before receipt of audited numbers is largely a question of complying with the terms of the bonus arrangement and any applicable bylaw. The minutes

135 RTCKC46950-51.

136 CR0686 (signed by McDougal).

137 Madison Financial minutes dated Jan. 21, 1985, IG Ex. III-50, at 1. Young does not recall whether this amount was paid on account of 1984 profits or 1985 profits. Young Interview, Nov. 2, 1995, at 21-23. From the text of the minutes, he would draw the inference that it was meant to be a prepayment of the 1985 bonus, but he really does not know what was meant, and he cannot reconcile his inference with the fact that these payments were not deducted from the bonus for 1985 paid in January 1986. *Id.*

138 Young Interview, Nov. 2, 1995, at 43-44.

that purport to establish the bonus arrangement are silent on this point.¹³⁹ Therefore, it cannot be said that paying the bonus before receipt of the audit report was wrongful. It was careless not to require an adjustment after the audit, as is customary, but at this point carelessness is not actionable.¹⁴⁰

Failing to repay any unearned portion of the bonus: There are two theories for saying that part or all of the bonus was unearned:

- o If the April 1985 payment was a prepayment of McDougal's 1985 bonus, then the payment made in January 1986 should have been reduced by \$30,000.
- o Once either of the audited financial statements was received--both showed that Madison Financial did not have adequate net income to justify the bonus--the unearned portion of the \$75,949 should have been returned.

Under either theory, taking or retaining the unearned portion of the bonus might constitute intentional wrongdoing on the part of McDougal. There is no evidence that McDougal repaid Madison Financial any part of this bonus. A review of Madison Financial's general ledger history and the McDougals' checking account for 1986 does not show any such repayment.

If Jim McDougal's 1985 bonus should have been adjusted for audited results, or if it should have been reduced by \$30,000, then McDougal should have repaid Madison Financial the difference. If, as the evidence shows, he did not, the overpayment represents a loss to Madison Financial.

If the \$30,000 payment should have been subtracted from the payment, the overpayment obviously was \$30,000. If not, but if an adjustment should have been made once the Frost & Company audit report was received, then the overpayment was \$42,324.¹⁴¹ If both are true, the overpayment was

139 In general, payment of bonuses before receipt of audited financial statements is unusual but not unheard of. For example, were tax rates about to increase, a company might arrange to pay bonuses before year-end. In such circumstances, audited financial statements would not be available. Typically, however, a company that did this would require an adjustment (either an additional payment, or a return of a portion of the payment) after the books were closed and final numbers were available.

140 See Preliminary Report at 7.

141 Based on Frost and Company's report, net income for Madison Financial was \$323,960. Adding back the McDougal bonus expense of \$78,952 results in adjusted income before bonus expense--the new starting point--of \$402,912. For the bonus to be 10 percent after profits (as is customary), some algebra is necessary. The result is a bonus of \$36,628. Deducting the \$36,628 from income before bonus of \$402,912 results in income after bonus of (continued...)

\$69,321.¹⁴² In any event, the \$40,000 disbursement from the McDougals' checking account on January 23, 1986, which funded a payment to Stephens Security Bank, was funded by this bonus.¹⁴³

ii. The \$300,000 loan made to Susan McDougal in April 1986.

As discussed in the Preliminary Report, in April 1986, Capital Management Services loaned \$300,000 to Susan McDougal, dba Master Marketing. The proceeds were deposited into the McDougals' joint checking account at Madison Guaranty.¹⁴⁴ Of these proceeds, \$25,000 were used to fund an "earnest money" deposit on certain International Paper Company land purchased in the name of Whitewater Development Company and \$111,524 retired the remainder of Flowerwood Farms' debt to Stephens Security Bank.¹⁴⁵

The Preliminary Report did not explicitly discuss the possibility that Madison Guaranty had indirectly financed the Capital Management loan to Susan McDougal. Another report prepared in this investigation, entitled *A Report on Certain Real Estate Loans and Investments Made by Madison Guaranty Savings and Loan and Related Entities*, addresses this subject. As described at pages 23-26 of that report: Madison Guaranty made an \$825,000 loan to Dean Paul, Ltd. (which was never repaid);¹⁴⁶ Dean Paul, Ltd. used these funds to purchase property from David Hale, owner of Capital Management; after paying off debt on the property, Hale and a trustee were left with \$502,000 of the Dean Paul, Ltd. proceeds; the \$502,000 was deposited into Capital Management; and the \$502,000 enabled Capital Management to

141 (...continued)

\$366,284. The bonus of \$36,628 is 10 percent of \$366,284. Thus, the difference between the amount of bonus paid (\$78,952), and the proper amount of bonus, based on Frost & Company numbers (\$36,628), is \$42,324. This would be the amount of excessive bonus if all the stated assumptions are correct.

142 The correct bonus, based on Frost's numbers, was \$36,628. Subtract from this the \$30,000 and \$6,628 is left. The bonus actually paid (\$75,949) minus \$6,628 equals \$69,321.

143 See chart 12.

144 See Preliminary Report at 85-86.

145 *Id.* at 85-86, 115-22.

146 The RTC recovered a judgment against Dean Paul and Dean Paul, Ltd. of approximately \$600,000 (net). The judgment was sold to a joint venture in which the RTC is a venturer. If money is collected on the judgment, the RTC will stand to benefit.

fund the \$300,000 Susan McDougal loan.¹⁴⁷ The Independent Counsel's indictment dated August 17, 1995 of Jim McDougal, Susan McDougal and Jim Guy Tucker alleges essentially the same facts and deems this a conspiracy to defraud.¹⁴⁸ Chart 12A, which is new, illustrates this transaction.

The fungibility of money makes it difficult to say which transaction (the January 1986 transaction or the April 1986 transaction) funded the repayment to Stephens Security Bank of the funds that went to Whitewater. Nevertheless, both transactions may have involved intentional wrongdoing (on the part of the McDougals) and both transactions apparently caused a loss to Madison Guaranty.

Transaction 8 resulted in the payment of \$24,456 to Whitewater in 1985. The two transactions in 1986 that repaid the Stephens Security Bank loan which indirectly funded the \$24,456, however, cost Madison Guaranty much more. The McDougal bonus of January 1986 cost Madison Guaranty at least \$42,324 and perhaps as much as \$75,949. The Dean Paul, Ltd. loan of February-April 1986 may have cost Madison Guaranty as much as \$1.2 million.¹⁴⁹ The relationship of Whitewater to the McDougal bonus and the Deal Paul loan, however, would appear to be tangential at best.

5. Summary.

Traceability has not been established between Madison Guaranty and transactions 2, 4, 5 and 7. There is no reasonable basis to allege that these transactions caused any loss to Madison Guaranty.

While traceability can be established with respect to transactions 1, 3A, 3B and 9, there is no reasonable basis to allege liability or damages. Transaction 6 may raise questions, but its sole beneficiary has been released by the RTC after litigation over commissions.

This leaves only the McDougal \$30,000 bonus and transaction 8. The evidence calls into question the bona fides of the \$30,000 bonus paid in April

147 Don Denton Interview, June 1, 1994, at 11. Another \$150,000 of the \$825,000 loan from Madison Guaranty to Dean Paul, Ltd. enabled Capital Management to fund a loan to Castle Sewer & Water Company, which it used to make the down payment to Madison Financial on a purchase of the Castle Grande sewer and water facilities. *Id.*

148 McDougal Indictment ¶ 16, at 10-12. The Indictment also alleges that Capital Management's receipt of the \$502,000 enabled it to seek additional capital from the Small Business Administration. *Id.* ¶ 16(l), at 12.

149 The figure of \$1.2 million is taken from damages calculations performed by RTC Investigations. The RTC has entered into an agreement with Tucker tolling all statutes of limitations.

1985. There also is some basis for believing that the RTC could prove liability and damages with respect to transaction 8. Jim McDougal's retention of the January 1986 bonus may be wrongful and the money came directly from Madison Financial. Susan McDougal's receipt of the \$300,000 loan from Capital Management may be wrongful and may be traceable back to Madison Guaranty.

D. Analysis of possible claims.

1. Common law fraud.

To state a claim for fraud, one must have evidence of material misstatements or of material omissions by one who has a duty to make a statement.¹⁵⁰ Under Arkansas law, the elements of common law fraud are:

- o A false representation of a material fact;
- o Knowledge or belief on the part of the person making the representation that the representation is false;
- o An intent to induce reliance upon the false representation;
- o Justifiable reliance; and
- o Resulting damages.¹⁵¹

To evaluate a possible claim by the RTC as successor in interest to Madison Guaranty, one must focus on the means by which money left Madison Guaranty. A case for fraud against someone might be made out if, for example, that money was obtained by means of a material misstatement or omission.

a. The \$30,000 McDougal bonus.

This looks like fraud. If Greg Young's version of the facts is credited, McDougal needed some money, so he, working through Latham, took \$30,000 and rather clumsily papered the record to make the transaction look like a bonus and then a consulting fee and then a capitalized cost of developing Maple Creek. No credible evidence supports the characterization of the payment as a consulting fee or a capitalized cost of developing Maple Creek.

¹⁵⁰ The evidence also must suffice to meet the pleadings requirements of Fed. R. Civ. P. 9(b), which requires that "the circumstances constituting fraud or mistake . . . be stated with particularity."

¹⁵¹ *Morris v. Valley Forge Insurance Co.*, 305 Ark. 25, 805 S.W.2d 948, 951 (1991).

Nor does much evidence support its characterization as a bonus. As Madison Financial's "disinterested" directors, Latham and Young could have awarded McDougal a bonus, but Young did not even know he was a director, and Latham's repeated attempts to recharacterize the transaction would undermine any argument that it was bona fide.¹⁵²

b. Transaction 8.

Transaction 8 involves two quite different transfers out of Madison Guaranty. The first is the bonus payment to McDougal made in January 1986. The second is the loan to Dean Paul, Ltd. that, according to the Independent Counsel, funded Capital Management's loan to Susan McDougal; this occurred in several steps between February and April 1986.

The \$75,949 bonus: This appears to be wrongful but theories other than fraud seem more appropriate and easier to prove. The bonus was paid on the strength of unaudited financial statements. Both the Frost & Company audit and the Peat Marwick audit revealed that these unaudited financial statements were wrong. Without more, however, the fact that the auditors made corrections, even material corrections, does not prove that the unaudited statements were deliberately false. While the evidence assembled in the various parts of this investigation shows a number of accounting entries that, at the very least, were questionable, proving, one by one, that these were intentionally wrong and then cumulating them to decrease net income materially would be difficult and expensive. Proving that failures to recognize losses were deliberate also would be difficult.

The loans: The McDougal Indictment deems these loans the product of a conspiracy to defraud involving the McDougals and Tucker. The RTC has an agreement with Tucker tolling all statutes of limitation ("tolling agreement").

c. The other traceable transactions.

Transactions 1, 3A, 3B, 6 and 9: Given Castleberry's and Young's explanations of how payables were handled, one could hypothesize that somebody might have forged an invoice or lied about the purpose of a check. The evidence does not support such a hypothesis. The checks and deposit slips do not provide evidence that the transactions lacked a legitimate basis. Nor has other evidence to that effect been located. In each instance, Madison Guaranty or Madison Financial had an existing business relationship with its direct payee (Bill Henley, Madison Marketing, Madison Real Estate or West-Ark Construction). Thus, the record does not allow the RTC to state a claim for fraud with respect to these transactions.

¹⁵² Whether a claim such as this could be pursued cost-effectively is discussed in part II.E below.

2. Conversion.

Conversion is the civil-law counterpart to theft. Its essence is the intentional taking of property belonging to another in violation of the owner's rights. It is an intentional tort. Under Arkansas law, the elements of conversion are:

- o The exercise of dominion over the property of another;
- o With the intent to exercise that dominion or control that dominion;
- o In violation of the rights of the owner or person entitled to possession of the property; and
- o Resulting damage.¹⁵³

The \$30,000 bonus: Here, property (money) belonging to Madison Guaranty or Madison Financial was taken and given to Jim McDougal personally. The clumsy attempts to mischaracterize this transaction in the record permit an inference that the taking of the money was both deliberate and wrongful.

The \$75,949 bonus: Here too, money belonging to Madison Guaranty or Madison Financial was taken and given to Jim McDougal personally. What is less clear is evidence of a wrongful intent. Jim McDougal may argue that when he received this money he believed that Madison Financial's earnings supported the bonus. Whether or not he had such a belief in January 1986, however, by February 1986 the Frost & Company audit showed that Madison Financial had not earned that much money. By then, at least, McDougal must have known that he should return a portion of his bonus. He did not do so.

To be conversion, the taking of property need not be a manual taking or for the defendant's own use but only in exclusion or defiance of the plaintiff's rights.¹⁵⁴ A claim for conversion can be stated against one who came into possession lawfully and then improperly exercised dominion or control over the

153 *City National Bank of Fort Smith v. Goodwin*, 301 Ark. 182, 783 S.W. 2d 335, 337 (1990).

154 *McKenzie v. Tom Gibson Ford, Inc.*, 295 Ark. 326, 749 S.W. 2d 653, 655 (1988).

property.¹⁵⁵ The law does not require a demand for return of the property and a refusal.¹⁵⁶

If, however, the bonus was paid as the result of a mutual mistake or as the result of a unilateral mistake made by Madison Financial, no claim for conversion can be stated:

The general rule is well settled that one who takes and disposes of the goods of another is guilty of a conversion thereof, although he did so under an honest but mistaken belief that the goods were his own. However, the rule does not apply where the mistake is mutual and where the owner's error is solely responsible for the taking and use of the property by defendant.¹⁵⁷

Nevertheless, it might be possible to state a claim against McDougal for money had and received. Such a claim can be based on mistake.¹⁵⁸ It is more in the nature of assumpsit and thus *ex contractu*.¹⁵⁹ Thus, intentional conduct is not an element of this claim. Even so, proof of intentional misconduct, coupled with proof of the elements of this claim, might satisfy the extender statute. In the absence of any case law it is impossible to say for sure.

155 In *McKenzie*, for example, a car dealership that accepted "earnest money" from plaintiff could be liable for conversion when it used that money to pay down a loan plaintiff had co-signed at some earlier time for her son.

156 *City Nat. Bank of Fort Smith v. Goodwin*, 783 S.W.2d at 340.

157 89 C.J.S., *Trover and Conversion*, §10. See also *Restatement 2d, Torts*, § 244. Compare *Newhart v. Pierce*, 254 Cal. App. 2d 783, 792-93, 62 Cal. Rptr. 553 (1967) (defendants' mistaken belief that they could remove cattle under options to purchase was not a defense to an action for conversion of the cattle).

158 See e.g., *General Contract Purchase Corp. v. Clem*, 220 Ark. 863, 251 S.W. 2d 112, 113 (1952) ("Restitution does not presuppose a wrong by the person who received the money, and the presence of actual fraud is not essential to the invocation of [a cause of action for money had and received]"). It is an action greatly favored by the courts, less restricted and fettered by technical rules and formalities than any other form of action. *Import Motors, Inc. v. Luker*, 268 Ark. 1045, 599 S.W. 2d 398, 401 (Ark. App. 1980). A cause of action for unjust enrichment is the equitable counterpart of an action for money had and received but is maintainable only under such circumstances that in equity and good conscience prevent the wrongdoer from keeping the property. *Fite v. Fite*, 233 Ark. 469, 345 S.W. 2d 362, 363 (1961).

159 *St. Paul-Mercury Indemnity Co. v. City of Hughes*, 231 Ark. 530, 331 S.W. 2d 106, 109 (1960).

The loans: Here, fraud seems the more apposite theory, but some cases suggest that obtaining a loan under false pretenses amounts to conversion.¹⁶⁰

Transactions 1, 3A, 3B, 6 and 9: So far as can be determined, services were rendered by the vendors paid through these transactions. There is no evidence of conversion.

3. Breach of fiduciary duty.

As noted in the Preliminary Report, this could be an intentional tort, but only if one can prove a wrongful intent.

The \$30,000 bonus: As noted above, one can infer a wrongful intent from the efforts to mischaracterize this transaction.

The \$75,949 bonus: Proof of failure to repay this bonus after receipt of financial statements showing it to be excessive might support such a claim.

The loans: If the Independent Counsel proves his allegations of a criminal conspiracy, the requisite intent probably would be established.

Transactions 1, 3A, 3B, 6 and 9: So far as can be determined, services were rendered by the vendors paid through these transactions. The only fiduciary duty issues are the issues raised by transactions 3B and 9. As noted above, those theories are weak.

4. Check kiting.

Check kiting is really a special case of fraud or conversion, or both. As noted in the Preliminary Report, check kiting involves a scheme to create the illusion that one has sufficient money in the bank to cover the requested draws when, in fact, one does not have sufficient money. Two conditions must exist for a successful check-kiting scheme. First, there must be a period of several days in the collection process before the depository bank presents the check to the drawee bank. Second, the banks must be willing to pay checks drawn against uncollected funds.¹⁶¹ If these conditions are met, one can, at least for a time, pay out money that one does not have and yet not create an overdraft. Put another way, the successful check kite requires the use of two or more banks, between or among which money must be shuttled so as to fool one or

160 *In re Strapko*, 5 Bankr. Rptr. 443, 445 (Bankr. D. Minn. 1980); *In re Blagaich*, 67 Bankr. Rptr. 375, 377 (Bankr. S.D. Fla. 1986).

161 See Benton E. Gup, *Bank Fraud: Exposing the Hidden Threat to Financial Institutions* 25 (Bankers Publishing Co. 1990).

more of the banks into thinking that the person who writes the checks has money when, in fact, that person does not have money.

The situation described here does not fit this pattern. Money was not shuttled between two banks; all the money at issue came out of Madison Guaranty and, for the most part, all the money stayed at Madison Guaranty at least until it reached Whitewater and was put to use paying creditors.¹⁶² In addition, nobody seems to have been "fooled" in the sense that one normally is fooled by a kite. As detailed in the Preliminary Report, overdrafts were created or exacerbated all the time; indeed, Madison Financial was chronically in a state of being overdrawn. If this were a kite, it was singularly unsuccessful at forestalling overdrafts.

5. Conspiracy.

In Arkansas, the elements of civil conspiracy are:

- o A combination of two or more persons;
- o To accomplish an unlawful or oppressive purpose or a lawful purpose by unlawful, oppressive or amoral means;
- o One or more overt acts committed pursuant to the conspiracy;
- o Damages caused by these acts.¹⁶³

To state a claim for civil conspiracy, one must be able to identify the underlying unlawful act that the conspirators were aiming to commit. The conspiracy (or agreement) by itself is not actionable unless one can show that it was aimed at the commission of a wrong (here, "fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution"¹⁶⁴). Thus, while conspiracy is sometimes referred to as a claim or cause of action all by itself, it is better conceived of as an alternate way of pleading the underlying tort against a group of people, some of whom did not commit all the elements of the tort themselves and thus would not be directly liable individually absent the allegation of conspiracy.¹⁶⁵

¹⁶² Of the entities mentioned above, only West-Ark Construction seems to have banked elsewhere.

¹⁶³ *Mason v. Funderburk*, 247 Ark. 521, 446 S.W. 2d 543, 548 (1969).

¹⁶⁴ 12 U.S.C. § 1441a(b)(14)(A)(ii).

¹⁶⁵ See *Southwestern Pub. Co. v. Ney*, 227 Ark. 852, 302 S.W.2d 538, 542-43 (1957); *Ragsdale v. Watson*, 201 F. Supp. 495, 501-02 (W.D. Ark. 1962).

To state the claim of conspiracy, say, conspiracy to commit fraud or to convert someone's property, one must first be able to state a claim for the underlying offense. As noted above, the RTC might be able to state claims for fraud, conversion and breach of fiduciary duty relating to McDougal's \$30,000 bonus paid in April 1935 and to transaction 8.

The \$30,000 bonus: The evidence suggests that this may have been a conspiracy on the part of McDougal and Latham. Whether others joined such a conspiracy is difficult to say. It seems unlikely that Heritage or Strayhorn had the requisite knowledge or intent. With regard to Young, the question is much closer as to whether he made the requisite agreement to participate in the conspiracy. This question turns on the factual question of how much knowledge he had of the conduct of McDougal and Latham (which, for purposes of this discussion, is assumed to be deliberate and unlawful). If the finder of fact concludes that Young had knowledge that McDougal and Latham were engaging in unlawful and tortious activity, his participation could lead to the inference of his agreement and could render him liable for conspiracy.¹⁶⁶ There is a significant possibility, however, that he could be viewed as someone who simply did what his boss told him to do without intending to join in a conspiracy.

The \$75,949 bonus: The evidence suggests that the bonus was believed to be bona fide when paid. The failure to repay the bonus may be wrongful, but that appears to be the unilateral wrongful act of McDougal. Thus, a conspiracy theory appears inappropriate here.

The loans: The Independent Counsel has alleged that these transactions were undertaken pursuant to a conspiracy involving the McDougals and Jim Guy Tucker. As noted, the RTC has a tolling agreement with Tucker.

6. Aiding and abetting.

Arkansas has expressly adopted the principle of aiding and abetting:

166 See *United States v. Cohen*, 1990 U.S. Dist. LEXIS 17675, *11-*12 (E.D. Pa. 1990) (denying an accountant's motion for acquittal following his conviction for conspiracy to obstruct the functions of the IRS and aiding and abetting the filing of false tax returns). See also *United States v. French*, 974 F.2d 687, 696 (6th Cir. 1992) ("[p]roof of a formal agreement is not required; it must only be proven that members of the conspiracy had at least a tacit or material understanding to try and accomplish an unlawful goal), *cert. denied*, 122 L. Ed. 2d 160 (1993). But cf. *Resolution Trust Corp. v. Rowe*, 1993 U.S. Dist. LEXIS 1497, at *29-*33 (N.D. Cal., Feb. 5, 1993) (holding that a title company's participation in a phony loans conspiracy could not be inferred from the title company's recklessness in allowing documents to be removed from the title company's offices and notarized elsewhere).

All who actively participate in any manner in the commission of a tort, or who command, direct, advise, encourage, aid or abet its commission, are jointly and severally liable therefor.¹⁶⁷

The Arkansas courts have not, however, delineated the elements for establishing aiding and abetting liability in a civil context.

Other courts, in slightly different contexts, have elaborated at length on the elements of aiding and abetting and on the standard to be applied in determining whether the elements have been satisfied. In a leading case, one federal court, relying in part on *Restatement (Second) of Torts* § 876 (1979), set forth the following elements for aiding and abetting:

- the party whom the defendant aids must perform a wrongful act that causes injury;
- the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; and
- the defendant must knowingly and substantially assist the principal violation.¹⁶⁸

Like conspiracy, aiding and abetting is a legal theory used to impose liability on someone who knowingly assists in the commission of a tort but does not perform all the elements of that tort himself. Without the underlying tort, there is no claim for aiding or abetting. As noted above, the RTC might be able to state claims for fraud, conversion and breach of fiduciary duty.

The \$30,000 bonus: As noted, the evidence suggests that this may have been a conspiracy on the part of McDougal and Latham. Heritage and Strayhorn may have assisted in the commission of the act, but it is unclear that they did so knowing that they were participating in an unlawful scheme.

Young, however, may be liable for aiding and abetting. The pivotal question as to Young is whether he had the requisite knowledge that he was assisting an illegal or tortious activity. Given that Latham told Young that "We need to get some money in Jim's hands"¹⁶⁹ as the reason for writing the

167 *Hinton v. Bryant*, 236 Ark. 577, 367 S.W.2d 442 (1963). See also *Cobb v. Indian Springs, Inc.*, 258 Ark. 9, 522 S.W.2d 383 (1975) (applying certain principles of aiding and abetting, i.e., advice or encouragement as substantial factor in causing tort, though not labeling them as such).

168 *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983).

169 Young Interview, Nov. 2, 1995, at 26.

check, Young may have sufficient knowledge.¹⁷⁰ Additionally, the RTC might not have to show that Young had actual knowledge of wrongdoing, but only that he should have known or was reckless in not knowing.¹⁷¹ Even if recklessness will suffice to establish aiding-and-abetting liability, however, it is an open question whether reckless participation in the intentional misconduct of others will satisfy the statute-of limitations extender statute's requirement of "fraud" or "intentional misconduct."¹⁷²

The \$75,949 bonus: The evidence suggests that the failure to repay the bonus was the unilateral act of McDougal.

The loans: The Independent Counsel has alleged that these transactions were undertaken pursuant to a conspiracy involving the McDougals and Jim Guy Tucker. The theory, if proved, also might support an aiding and abetting claim against Tucker.

E. Cost-effectiveness.

As noted above, the RTC brings litigation only if the litigation appears to be cost-effective. Thus, even if a cause of action could be alleged, a case is not worth bringing if the would-be defendants have no money or the expected recovery exceeds the expected cost of obtaining that recovery.

170 See *United States v. Cohen*, 1990 U.S. Dist. LEXIS 17675, *2-*8 (E.D. Pa. 1990)

171 Under Arkansas law a court might apply a "knew or should have known," standard to determine whether Young is liable for aiding a fiduciary in breaching that fiduciary's duty to Madison Guaranty. See *Robertson v. White*, 633 F. Supp. 954, 967 (W.D. Ark. 1986). In the securities context, before *Central Bank of Denver v. First Interstate Bank of Denver*, 114 S. Ct. 1439 (1994) eliminated the private right of action for aiding and abetting a violation of section 10(b) of the Securities Act of 1934, some courts held that recklessness could suffice to establish scienter when a fiduciary is alleged to have aided and abetted a violation of the securities law. E.g., *Rolf v. Blyth Eastman Dillon & Co.*, 570 F.2d 38, 44 (2d Cir.) ("where, as here, the alleged aider and abettor owes a fiduciary duty to the defrauded party, recklessness satisfies the scienter requirement"), *cert. denied*, 439 U.S. 1039 (1978); *IIT, an Intern. Inv. Trust v. Cornfeld*, 619 F.2d 909, 923 (2d Cir. 1980). It may be difficult, however, to persuade a court to apply the rationale of those cases in other contexts. See *Resolution Trust Corp. v. Rowe*, 1993 U.S. Dist. LEXIS 1497, at *29-*33 (N.D. Cal. 1993) (rejecting RTC's argument that knowledge could be established from recklessness where fiduciary alleged to have aided and abetted fraudulent scheme was an title company with narrower duties than those imposed by the securities laws).

172 12 U.S.C. § 1441a(b)(14)(A)(ii).

The \$30,000 bonus: The only beneficiary, Jim McDougal, filed for bankruptcy and obtained an order of discharge from the bankruptcy court.¹⁷³ John Latham was involved in this transaction, but he too filed for bankruptcy.¹⁷⁴ Proving this claim would require discovery from at least five witnesses (McDougal, Latham, Young, Heritage and Strayhorn). Preparing and prosecuting this claim would cost considerably more than \$30,000. Thus, this claim is not cost-effective.

The \$75,949 bonus: The only beneficiary, Jim McDougal, filed for bankruptcy and obtained an order of discharge from the bankruptcy court. The available evidence does not suggest that anyone else engaged in intentional wrongdoing with respect to this transaction. Proving this claim would require discovery from at least five witnesses (McDougal, Latham, Young, somebody from Frost & Company and somebody from Peat Marwick). Preparing and prosecuting this claim would cost considerably more than \$75,949. Thus, this claim is not cost-effective.

The loans: The potential damages here are much larger: approximately \$1.2 million. If the Independent Counsel obtains convictions with respect to these matters, a claim based on these loans might be pursued in a cost-effective manner. Alternatively, the RTC could request that the Independent Counsel seek restitution on behalf of the RTC from any parties convicted of a crime; this might avoid the cost and delay inherent in commencing a separate civil action after the resolution of the criminal proceedings. Whether anyone could pay a judgment of this magnitude is unclear. The McDougals and Latham have no money. Who else might be involved, and whether they have money, remains to be determined.¹⁷⁵ From what is known, only Jim Guy Tucker might have the ability to satisfy a judgment of this magnitude.¹⁷⁶

173 Jim McDougal filed for bankruptcy in September 1991 and obtained an order of discharge on January 17, 1992 (PMS0532, PMS0552), well before the enactment of the RTC Completion Act of 1993. The order of discharge could be set aside only if the RTC could prove a fraud on the bankruptcy court; proof that McDougal defrauded someone other than the bankruptcy court would be of no avail. Susan McDougal has not filed for bankruptcy, but the RTC already has a judgment of almost \$400,000 against her (as well as Jim McDougal, although the claim against him would be discharged). There is no evidence that either McDougal could satisfy this outstanding judgment, let alone pay something in addition should another judgment be sought and recovered against them.

174 Latham and his wife filed a bankruptcy petition on March 13, 1992. *In re Latham*, Case No. 92-40703 MDS (Bankr. E.D. Ark.). A "no asset report" was filed by the bankruptcy trustee on May 21, 1992. The debtors were discharged on June 23, 1992. The case was closed on September 17, 1992. The statute of limitations has run. It is now too late to commence proceedings to revoke the discharge.

175 The RTC has a judgment of approximately \$600,000 (net) against Dean Paul and Dean Paul, Ltd.

176 As noted above, the RTC has a tolling agreement with respect to Tucker.

III. SUMMARY AND ANALYSIS OF NEWLY RECEIVED INFORMATION PERTAINING TO THE CLINTONS.

The evidence does not suggest that the Clintons played any role with respect to the transactions discussed above. Nevertheless, because these transactions may indirectly have benefitted Whitewater (in the flow-of-funds sense discussed in the Preliminary Report), this part of the investigation has included an examination of what, if anything, the Clintons knew about these transactions when they occurred.

The Preliminary Report said little about the Clintons' knowledge of these matters because at the time little was known. Since then, however, additional information has been obtained: the Clintons' interrogatory responses; additional documents received from the Clintons' counsel, David E. Kendall, in late May 1995; and documents mentioning Whitewater that Kendall received from the White House on July 27, 1993 (the documents from the office of the late Vincent W. Foster, Jr.). This evidence has been examined against the previously available evidence both for points of consistency and for points of inconsistency.

The Clintons' interrogatory responses provide considerable new information about their expectations and approach to their investment in Whitewater. According to the Clintons, they were "passive" investors who left matters to Jim McDougal and who received relatively little information about the project. The May 1995 document production contains little that is not cumulative of documents already received. Only a few of these documents merit mention below. Similarly, the July 1995 production of the Foster documents contains little relevant to this phase of the investigation. Again, only a few documents merit mention below. Most of the Foster documents concern tax issues, mainly with respect to the Clintons' 1992 income tax return. As stated in the Preliminary Report, personal tax issues are not within the scope of the RTC's inquiry.

In the sections that follow, these three sources of information are discussed in the order that topics appear in the Preliminary Report. Wherever possible, the discussion here cross-references the appropriate section of the Preliminary Report.

A. Background to Whitewater.

The Preliminary Report discussed the McDougals' background in real estate activities in the years before the Whitewater project began.¹⁷⁷ The new information supplements this discussion with information about the Clintons' background in real estate activities.

¹⁷⁷ See Preliminary Report at 11-15.

Compared to the McDougals' experience with real estate investments, the Clintons' experience was relatively modest. Before August 1978 (when the Clintons and the McDougals purchased Whitewater), President Clinton had purchased real estate only when he had purchased two personal residences.¹⁷⁸ Mrs. Clinton had never purchased real estate except to purchase one personal residence and had never sold real estate.¹⁷⁹

Before August 1978, the Clintons made only one real estate investment. In 1977, President Clinton invested in a five-acre parcel of land together with Jim McDougal. The investment may have been made through Rolling Manor, but the Clintons are not sure. As reported on the Clintons' 1978 tax return, the parcel was sold on May 17, 1978 for \$5,000, resulting in a capital gain of \$2,150. According to President Clinton: "To the best of my recollection, this was a small real estate investment I had had with Jim McDougal, and, while small, it was a profitable one. This experience confirmed my impression that he was capable of putting together successful real estate ventures."¹⁸⁰

B. 1978-1982: The initial phase of the project.

1. 1978-1979: The original purchase of the land and the creation of the company.

Pages 16 through 19 of the Preliminary Report discussed the Clintons' and the McDougals' purchase of Whitewater and their later creation of Whitewater Development Company, Inc. (referred to here, as in the Preliminary Report, as "the Company"). The Preliminary Report said relatively little about the process by which the investors decided to purchase Whitewater. The new information helps complete that discussion.¹⁸¹

President Clinton cannot now remember specifically what he and his wife did before deciding to purchase the Whitewater real estate. As a native Arkansan, he had a general knowledge that there were many profitable land investments in the northern part of the state and that there appeared to be a market for vacation retirement real estate in northern Arkansas. He also had

178 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 1(a)-1(c), at 1.

179 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatories Nos. 1(a)-1(c), at 1-2.

180 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 1-2, at 1-3. See also Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatories Nos. 1-2, at 1-3.

181 The next two paragraphs supplement the Preliminary Report at 16, following n.50.

made a small but profitable real estate investment with Jim McDougal that apparently was closed out on May 17, 1978. He states:

The Whitewater property came to my attention through Jim McDougal, but I can't remember what he said, and I certainly can't recall "each and every conversation" I had with anyone about it or every document I reviewed. My wife and I did not visit the property before buying it with the McDougals.¹⁸²

Neither of the Clintons can recall meeting or talking to representatives of Union National Bank or of Citizens Bank of Flippin about either of the loans used to purchase the Whitewater real estate.¹⁸³ Nor can they recall what information (if any) they provided to the banks, but they believe they would have provided whatever the banks deemed necessary to process the loan application.¹⁸⁴

For the Clintons in 1978, the purchase of Whitewater represented a relatively large investment: they had placed approximately \$200,000 at risk, although they had a relatively stable asset (land) to secure their debt.¹⁸⁵ By way of comparison, approximately two months later Mrs. Clinton decided to limit her investment in commodities trading to the much smaller sum of \$1,000. In response to a question by the press about her commodities trading, Mrs. Clinton stated that her long-time friend Jim Blair told her about opportunities in the cattle market:

And when Jim said, "I think there's going to be a great opportunity to make money," and explained why and asked me what I thought we could afford to invest, I told him \$1,000. So I opened an account at his very strong recommendation and proceeded to trade over the next months until July.¹⁸⁶

182 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 3, at 4-5. Mrs. Clinton incorporated by reference President Clinton's answer to this interrogatory. Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 3, at 4.

183 This paragraph supplements the Preliminary Report at 17 n.59.

184 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 5, at 11-12; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 5, at 7.

185 This and the next paragraph supplement the Preliminary Report at 17 n.62.

186 Transcript of Mrs. Clinton's press conference of April 22, 1994, as transcribed by Federal News Service, at 2.

Later in the same press conference, Mrs. Clinton reiterated the point. Mrs. Clinton was asked a question that started "You said that--just now--that you decided that \$1,000 was as much as you could risk" In her answer, Mrs. Clinton neither confirmed nor denied this statement. She simply said that "The \$1,000 was what I wanted to start with, and it was what I thought was a good beginning, a good investment for me."¹⁸⁷

Investing in land is a very different business than speculating on commodities. Nevertheless, Mrs. Clintons' statement about the amount she was willing to place at risk in commodities trading suggests that the Clintons, in 1978, were not of a mind to place large amounts of money into investments that they believed to be highly risky.

Taken together, the new evidence shows that the Clintons placed a fair amount of trust in McDougal and did fairly little themselves to investigate the investment. They had made money with McDougal on an earlier (albeit smaller) investment, and they believed that real estate prices in northern Arkansas were going to rise.

2. Whitewater, the corporation.

The Preliminary Report noted the formation of the Company but shed little light on why it was formed.¹⁸⁸ The Clintons say it was Jim McDougal's idea to form the Company. Mrs. Clinton says that she does not "recall why he proposed this, but we relied upon his real estate experience and agreed."¹⁸⁹

The Preliminary Report noted conflicting evidence as to the identities and equity percentages of the Company's shareholders.¹⁹⁰ In her press conference of April 22, 1994, Mrs. Clinton confirmed her belief that the Clintons jointly owned half of the Company:

Q. The Whitewater development was set up, as you say, as a 50-50 partnership between the Clintons and the McDougals, meaning that you were liable for 50 percent of the losses or 50 percent of the gains; and yet, by your own accounting, you lost half or even maybe a third of what the

187 *Id.* at 11.

188 This paragraph supplements the Preliminary Report at 19-20, following n.75.

189 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 9(a), at 11.

190 This paragraph and the next two supplement the Preliminary Report at pages 20-21, following n.86.

McDougals lost. This is according to the Lyons report. Doesn't that discrepancy represent some sort of gift or gratuity?

MRS. CLINTON: No. And let me say that, yes, the ownership of the corporation was 50-50. . . .¹⁹¹

In her interrogatory answers, Mrs. Clinton explained that the Clintons did not receive stock certificates but nevertheless understood that they owned half the equity in the Company.¹⁹²

The Preliminary Report also noted conflicting evidence with regard to who served as officers of the Company. It mentioned two tax reports apparently signed by Mrs. Clinton in June 1990, both of which listed her as president. Mrs. Clinton addresses this in her interrogatory answers:

In 1990, I learned from our personal accountant, Ms. Yoly Redden, that WDC's corporate charter had been revoked for nonpayment of franchise taxes and that state franchise tax reports had not been filed. The identification of me as "President" of WDC on the franchise tax reports which were subsequently filed appears to be simply an informal designation due to my actions on behalf of WDC in 1988-1990, as described above. The forms required the signature of an "officer," and the McDougals were both unavailable. I did not sign these two documents, but I wanted all the appropriate action taken so that WDC would no longer be delinquent. In preparing responses to these interrogatories, I have learned from my counsel that Ms. Carolyn Huber completed these two documents in accordance with instructions she received from personnel in Secretary of State's office when Ms. Huber went there to file the appropriate text paperwork and pay the \$345.15 in franchise taxes that were due so that WDC would no longer be delinquent. Ms. Huber was authorized to sign my name.¹⁹³

The question of who signed these June 1990 reports has little significance for this investigation. Madison Guaranty failed in 1989. Mrs. Clinton's work between 1988 and 1990 occurred several years after the McDougal bonuses, transaction 8 and McDougal's removal at the behest of the FHLBB.

191 Federal News Service Transcript at 13.

192 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 9(a), at 11.

193 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 9(e), at 14 (citations omitted).

3. Project marketing and management.

The Preliminary Report noted that an attempt was being made to interview Chris Wade, who had primary responsibility for marketing Whitewater to potential lot buyers.¹⁹⁴ As of this writing, Wade still declines to be interviewed and has stated through counsel that he will invoke the Fifth Amendment if subpoenaed.

The Preliminary Report expressed no view as to how long the investors thought it would take to sell all the lots.¹⁹⁵ The Clintons themselves had no definite idea as to how the project would be sold. President Clinton says: "When my wife and I invested in this venture, we relied upon the McDougals to conduct or supervise sales and marketing." "My wife and I did not have a definite idea of the 'probable sell-off period of the project', and we had no expectation as to the length of time we would be holding the investment."¹⁹⁶

The Preliminary Report mentioned the preparation of a marketing brochure for Whitewater. The brochure is among the recently produced documents.¹⁹⁷

4. The investors' expectations.

The Preliminary Report attempts to reconstruct the investors' expectations from the documentary evidence.¹⁹⁸ The new evidence addresses this issue more directly. In particular, the new evidence suggests that the investors' expectations as to project expenses may have been less definite than the Preliminary Report suggested. In his interrogatory answers, for example, President Clinton states:

We had no agreements, expectations or understandings with the McDougals as to what particular improvements would be made to the property, the cost of such improvements, or how long it would take to complete them.¹⁹⁹

194 See Preliminary Report at 22-23 n.96.

195 This paragraph supplements the Preliminary Report at 22.

196 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 4(b), at 9-10.

197 DKRT11000404-11.

198 See Preliminary Report at 24-27.

199 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 4(c), at 11.

Similarly, President Clinton states that the Clintons "had no written agreement with the McDougals as to how the mortgage loan would be repaid"²⁰⁰ The same is true with respect to the project financial and profit-sharing. The Clintons state that their agreement with the McDougals about the financing of the Whitewater project was oral and not formalized by a writing:

There was no particular definition of, nor limitation on, or financial commitment to the project, except that we anticipated that we would share equally with the McDougals in expenses and profits. Jim McDougal explained to us that he believed he could sell enough lots in a short period so that revenues from the escrow contract payments would make the project self financing, and based upon what we knew at the time about trends in Arkansas real estate and Jim's apparent success, we believed he was right.²⁰¹

Similarly, there was no target date for a positive cash flow. The Clintons understood that, in the early period of the project before any lots were sold, before the project generated income, the four investors would have to contribute at least enough money to service the acquisition debt. The Clintons

anticipated that we and [the McDougals] would make equal contributions and that any inequalities ultimately would be evened out from revenues of the project or when the venture was sold. The books and records of the project were kept by the McDougals, and I believe that we made contributions whenever they requested us to do so. We relied upon the McDougals to tell us when we needed to make a financial contribution to the venture.²⁰²

These statements are consistent with the other evidence.

200 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 7, at 14.

201 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 4(a), at 5-6.

202 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 4(a), at 7.

C. 1979-81: The years of land sales.

1. Operations and cash flow in fiscal year 1980.

The Preliminary Report mentioned that the Clintons contributed money toward Whitewater debt service in December 1978 by writing a check for \$10,130.58 to the Great Southern Land Company.²⁰³ Regarding this check, Mrs. Clinton says:

I believe I made the check out to Great Southern Land Company because Jim McDougal asked me to do so. Whitewater Development Company, Inc. (hereinafter, "WDC") had not been incorporated yet. I was not familiar with the Great Southern Land Company's activities, but I assumed it was a McDougal entity. I also assumed that in the early years of the project the McDougals would contribute their share toward the payment of interest and principal on the acquisition loans, but I had no knowledge of the source or amount of any such payments.²⁰⁴

The Preliminary Report noted that Whitewater sometimes lacked the money to pay debt service until just before, or just after, a payment was due.²⁰⁵ In this regard, both of the Clintons indicate that they knew little before 1992 about Whitewater's lot sales between 1980 and 1985, Whitewater's cash flow between 1980 and 1986, the McDougals' expenditures on the project between 1980 and 1986, or the source of the McDougals' money.²⁰⁶

2. The bank debt as of August 1980.

The Preliminary Report stated that McDougal replaced the \$20,000 Union Bank earnest money loan that he and Attorney General Clinton had taken out in 1978 with a \$20,000 loan from the Bank of Cherry Valley. It also stated that the Bank of Cherry Valley loan, unlike the Union Bank loan, was recourse only to McDougal and not to the Clintons. The Clintons disagree, taking the position that the Bank of Cherry Valley loan was recourse to them. Thus, President Clinton's answer to Interrogatory No. 6 states:

203 See Preliminary Report at 28.

204 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 8, at 9-10.

205 See Preliminary Report at 30.

206 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

I knew at some point that this loan had been shifted to the Bank of Cherry Valley. In my view, any shift of this \$20,000 loan from Union Bank to the Bank of Cherry Valley did not affect its character as an acquisition loan, for which my wife and I considered ourselves equally responsible with the McDougals for repayment. Indeed, my name and Jim McDougal's both appear on at least one of the Bank of Cherry Valley extension notes (DKRT100500, dated April 13, 1982, attached hereto at Tab 6A).²⁰⁷

President Clinton has no recollection of discussing the shifting of this loan from Union Bank to Bank of Cherry Valley with Jim McDougal or with anyone else.²⁰⁸

The Union Bank loan, on which both McDougal and President Clinton were liable, was paid off using funds obtained by Jim McDougal from Bank of Cherry Valley loan no. 25997. The original loan documents mention only McDougal.²⁰⁹ Thereafter, the Bank of Cherry Valley loan was extended six times.²¹⁰ The first such extension is evidenced by a promissory note. The note mentions, and is signed by, McDougal only.²¹¹ The second such extension, loan no. 27572, dated April 13, 1982 and paid off December 9, 1982 by the third extension, also is evidenced by a promissory note. This note bears McDougal's name and address but is signed both by "James B. McDougal" and by "Bill Clinton."²¹² So far as can be told from the documents (several of the promissory notes are close to illegible), the third, fourth, fifth and sixth extensions do not refer to, nor were they signed by, President Clinton.

To summarize: The \$20,000 Bank of Cherry Valley loan was taken out in June 1980 and finally retired in January 1985. For most of this period, the documentary evidence suggests that only McDougal had any liability on this loan. For the period between April 13, 1982 and December 9, 1982, however, President Clinton may also have been liable, by virtue of having signed the second loan extension.

207 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 6(a), at 12-13.

208 *Id.*, answer to Interrogatory No. 6(d), at 13-14.

209 See BCV0003-04; DKRT800313-14, 800316, 801223-24.

210 BCV0022, 32-34; DKRT100500, 400945-47, 801332.

211 DKRT801332.

212 DKRT100500, 101127, 400947.

3. Developments in the fall of 1980.

The Preliminary Report discussed financing and construction of a prefab house on Whitewater lot 13.²¹³ According to the Clintons, it was Jim McDougal's idea and not the Clintons' to purchase and install the prefab house on lot 13.²¹⁴

Initially the house was financed by money from Pembroke Manor, a McDougal-controlled entity. Mrs. Clinton says she does not recall the mechanics of the transaction and does not recall knowing anything about the involvement of Pembroke Manor in the financing of the house.²¹⁵ Later Mrs. Clinton refinanced the house by taking out a personal loan from McDougal's Madison Bank & Trust Company. Regarding this loan, Mrs. Clinton states that she had no agreement with Madison Bank except as set forth in the promissory note. She explains:

However, as previously stated, my husband's and my understanding with Jim McDougal was that the loan was essentially a corporate one: WDC [Whitewater Development Company, Inc.] would receive the loan proceeds (which I understood were to be used somehow to pay for the prefab house), WDC would receive the down payment whenever the lot and house were sold and the escrow payments thereafter, and WDC would repay the loan at the Bank of Kingston from its operating revenues, including the proceeds and escrow payments derived from the sale of the house and lot.²¹⁶

This explanation is consistent with the Company's later payment of principal and interest on the loan but does not clarify why the loan was taken out in Mrs. Clinton's name in the first place.

The Preliminary Report discussed the sale of Whitewater lot 7 and noted press speculation that the Clintons had expressed an interest in owning the lot, or had purchased it.²¹⁷ On this subject, President Clinton's interrogatory

213 See Preliminary Report at 31-34.

214 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 10(a), at 14-15.

215 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 10(c), at 15-16.

216 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 11(d), at 17-18.

217 See Preliminary Report at 35 n.163.

answers state: "We did not plan to keep or to buy any part of the project, although there was some discussion with the McDougals, very early on, about the possibility that, if sales went very well, we and they would each retain one lot."²¹⁸

4. Whitewater after three years.

The Preliminary Report discussed the project's situation after the first three years of operations and noted in particular what the pace of lot sales meant for debt service. As noted above, both of the Clintons indicate that they knew very little before 1992 about Whitewater's lot sales between 1980 and 1985. All they recall hearing is that, as of October 1981, "[t]hings are looking pretty good at Whitewater as our receivables run about equal to what we owe" and that, as of 1986, "the previous summer [1985], he [McDougal] had sold all the WDC property."²¹⁹

D. 1982-1985: The years of minimal sales and negative cash flows.

1. The sale of lot 13 to Hilman Logan and the repayment of Mrs. Clinton's Madison Bank loan.

The Preliminary Report described correspondence between Mrs. Clinton and Madison Bank in the summer of 1982 regarding the past due status of Mrs. Clinton's loan.²²⁰ Mrs. Clinton confirms that she

received DKRT700318, a letter dated August 5, 1982, from Ms. Theresa Pockrus at the Madison Bank & Trust . . . [Mrs. Clinton] responded to her letter with [Mrs. Clinton's] own letter dated August 11, 1982 (DKRT400134). . . . This letter reflects [Mrs. Clinton's] understanding, as stated in these interrogatory responses, that the repayment of this loan was a corporate responsibility.²²¹

218 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 4(b), at 9-10.

219 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32, referring to DKRT900101 (1981) and DKRT200475 (1986).

220 See Preliminary Report at 42.

221 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 11(e), at 18.

2. The Clintons' loan from Citizens Bank of Jonesboro.

The Preliminary Report noted that the Clintons borrowed money from Citizens Bank of Jonesboro and quoted a letter from McDougal stating that the Company had paid off this debt.²²² President Clinton states:

I recall very little about this 1979 loan for \$5000, which was repaid in 1982. When my counsel wrote to the bank, the bank responded that "[t]he underlying documents for this loan are no longer in existence due to our record retention policy. I attach at Tab 13A a copy of this letter (DKRT11000800-1000803), which has appended to it the available information about the loan provided to my counsel by the bank. I do not recall what I did with any loan proceeds I may have received, and I do not recall how the loan was repaid. My counsel have located one interest check I wrote for this loan, and a copy is attached at Tab 13A (DKRT800326). I do not recall how the remainder of the interest was paid. It is possible that it was a WDC-related loan and that WDC repaid the loan and paid most of the interest (see my response to no. 13(d), infra).

.....

Please see Global Response to No. 13, supra. As previously indicated, I do not have a recollection as to how the proceeds of this loan were used. I attach as Tab 13A a copy of a letter to me from Jim McDougal, dated March 1, 1982 (DKRT700340), which states:

"I have paid from Whitewater Development Corporation the note you owed Citizens Bank of Jonesboro. You are correct in your belief that the sum of money borrowed was a part of your investment in Whitewater."

The letter does not refresh my recollection about the loan.²²³

President Clinton's answer is consistent with the response that Citizens Bank of Jonesboro made to the RTC's subpoena. This investigation has turned up no other evidence as to the purpose of this loan.

²²² See Preliminary Report at 47-48.

²²³ Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 13, at 23-24.

3. Renewal of the Citizens Bank mortgage loan and origination of the Citizens Bank interest funding loan.

The Preliminary Report noted that the Clintons and the McDougals made no payments of principal or interest on the Citizens Bank mortgage loan from August 1981 through November 1982 and that the Company lacked the money to pay the interest that had accrued and was owing as of November 1982 (\$20,000). This situation was rectified by renewing the mortgage loan and by borrowing \$20,000 via a six-month balloon loan from Citizens Bank (the "Interest Funding Loan"). The Preliminary Report said that both of the Clintons and both of the McDougals signed the papers for the Interest Funding Loan, which was recourse to each.²²⁴

The Clintons say they have no particular recollection of the Interest Funding Loan and cannot verify that the signatures on the loan documents are theirs. In answer to interrogatories, each stated:

I have no recollection of this loan. It is possible that I signed an application for this loan or a promissory note at the request of Jim McDougal, although I do not recall doing so. I have no knowledge of how or why it was obtained, the terms of the loan, what it was used for, or when and how it was repaid. After receiving these interrogatories, my counsel were able to obtain from the successor to Citizens Bank and Trust Company a copy of what appears to be a promissory note for the loan referenced here, and this document is attached hereto at Tab 14A (DKRT11000809-11000811). The copy is not a particularly clear one, and I cannot be certain that the signature on the note is in fact mine.²²⁵

If the Clintons did sign the papers for this loan, the need to borrow money to cover their interest obligation might have suggested to them that sales did not suffice to cover debt service. Such an inference, if drawn, might have raised a question in their minds: It would have contradicted McDougal's statement to them in 1981 that "[t]hings are looking pretty good at Whitewater as our receivables run about equal to what we owe."²²⁶ The Clintons say

224 See Preliminary Report at 52-54.

225 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 14, at 25; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 14, at 25-26.

226 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32, referring to DKRT900101.

they did not know of any problem covering debt service.²²⁷ In any event, such knowledge as of 1982 would be remote in time and substance from the questionable transactions: the McDougal bonuses and transaction 8 (1985-1986).

4. Problems at Madison Bank.

The Preliminary Report described an FDIC cease and desist order entered against Madison Bank in April 1983.²²⁸ The Clintons say that neither of them learned of the FDIC cease and desist order until 1995, when they read the order in the attachments to the RTC's interrogatories to them.²²⁹

5. The refinancing of Mrs. Clinton's Madison bank loan using money that Governor Clinton borrowed from Citizens Bank of Paragould.

The Preliminary Report noted that Governor Clinton borrowed \$20,800 from Citizens Bank of Paragould in September 1983 and used that money to pay down Mrs. Clinton's loan from Madison Bank (the loan used to refinance the prefab house on Whitewater lot 13).²³⁰ President Clinton attaches no significance to the fact that he rather than Mrs. Clinton borrowed \$20,800 from Security Bank of Paragould in 1983 to replace Mrs. Clinton's \$30,000 loan from Madison Bank. The Clintons anticipated that the Company would be responsible for repayment of the loan, since it had obtained the benefit of the loan. The warranty deed to lot 13 was in Mrs. Clinton's name, but when the Company sold the lot and the house to Hilman Logan, the warranty deed to Logan was in the names of both of the Clintons. Both Clintons are listed as borrower in some of the renewal notes from Security Bank, e.g., DKRT200785.²³¹

227 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

228 See Preliminary Report at 54-56.

229 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 11(g), at 20; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 11(g), at 20.

230 See Preliminary Report at 57-58.

231 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 12(a), at 20-21.

Neither of the Clintons recalls why the loan was shifted from Madison Bank to Security Bank, nor do they recall approaching any banks about this matter.²³²

Neither of the Clintons recalls talking to Marlin Jackson about the Security Bank of Paragould loan.²³³ Mrs. Clinton, however, confirms receiving several letters from Jackson and also notes a telephone message dated March 2, 1987, DKRT11000402. Mrs. Clinton thinks she also talked to Bill Fisher, President of Security Bank in the period 1987-1988. She does not recall the conversations but the documents suggest that their general topic was the fact that the Company was not making payments on the loan in a timely manner.²³⁴

The Preliminary Report questioned whether the proceeds of the Security Bank of Paragould loan sufficed to repay the Madison Bank loan in full.²³⁵ President Clinton thinks that the money obtained from Security Bank was sufficient to pay off Madison Bank in full. He cites Madison Bank's real estate mortgage release, DKRT700383, which was a full release.²³⁶ This point need not be resolved; no evidence ties the repayment to Madison Guaranty.

6. Operations and cash flow for fiscal year 1984.

The Preliminary Report noted that Whitewater had a negative cash flow after debt service, which it covered by obtaining money from McDougal-controlled entities.²³⁷ As noted above, both of the Clintons indicate that they knew little before 1992 about Whitewater's lot sales between 1980 and 1985. Whitewater's cash flow between 1980 and 1986, the McDougals' expenditures on the project between 1980 and 1986, or the source of the McDougals'

232 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 12(d), at 22; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 12(d), at 21.

233 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 12(e), at 22-23; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 12(e), at 21.

234 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 12(e), at 21-22.

235 See Preliminary Report at 57-58, 65-66.

236 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 12(b), at 21-22.

237 See Preliminary Report at 59-60.

money.²³⁸ Similarly, in response to Interrogatory No. 20, the Clintons state that they have no knowledge of the source of funds that Whitewater used between 1984 and 1986 to pay down bank loans.²³⁹ Except possibly for the Interest Funding Loan of 1982-1983, which is relevant to knowledge of cash flow, no contrary evidence has been found.

7. Madison Guaranty's examination and supervisory agreement.

The Preliminary Report described an FHLBB Report of Examination, issued in June 1984, that was sharply critical of Madison Guaranty.²⁴⁰ The Clintons state that they were unaware of the 1984 Report of Examination and the 1984 Supervisory Agreement. Neither Clinton recalls reading or learning the contents of either of these documents.²⁴¹

E. Investigation of the possible flow of funds from Madison Guaranty to Whitewater.

The Preliminary Report described a series of nine deposits into Whitewater and analyzed each to see whether it might be traced back to Madison Guaranty.²⁴² The Clintons were asked a series of detailed questions designed to probe their knowledge (if any) of the facts underlying these transactions. The Clintons answered that they know nothing about these matters.²⁴³

The available evidence is consistent with this answer. While, as noted, the Clintons might at one point have had cause to question whether the lot sales covered debt service, that event--the signing of the Interest Funding

238 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

239 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 20, at 38-39; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 20, at 49.

240 See Preliminary Report at 63.

241 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 16(b), at 30-31; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 16(b), at 33.

242 See Preliminary Report at 69-94. These nine transactions are analyzed in detail in part II above.

243 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 15, 16, 19, 20, at 27-31, 35-39; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatories Nos. 15, 16, 19, 20, at 27-33, 45-50.

Loan--occurred in 1982. In contrast, the nine transactions started late in 1984 and ended in 1986. The evidence does not suggest that the Clintons had any knowledge of the source of the funds used in the nine transactions.

F. Investigation of other possible connections between Madison Guaranty and Whitewater.

1. 1985: The McDougal bonus and the payments to Senator Fulbright.

The Preliminary Report discussed a transaction by which former Senator J. William Fulbright sold a parcel of land near Little Rock (the "Deltic parcel") to an entity called Earth Movers. The transaction was funded in part by a putative bonus of \$30,000 paid by Madison Financial to Whitewater on behalf of Jim McDougal; the \$30,000 simply passed through Whitewater, which did not end up with any interest in the land.²⁴⁴

The Clintons state that they know nothing about the Deltic transaction, the bonus or the other matters described in this section of the Preliminary Report.²⁴⁵ No contrary evidence has been found.

2. 1985: Contributions to the Clinton campaign.

The Preliminary Report discussed a campaign fund raiser held April 4, 1985 at Madison Guaranty's offices in Little Rock, at which a number of people associated with Madison Guaranty made campaign contributions to Governor Clinton.²⁴⁶ In interrogatories, the Clintons were asked about this campaign fund raiser. Mrs. Clinton states that she did not attend this fund raiser, does not know whether Senator Fulbright attended and knows nothing about the contributions made at the fund raiser, including their source and use. She states:

I have no knowledge that any monies obtained directly or indirectly from WDC or any account of Madison Guaranty were ever improperly used to pay any of my or my husband's "personal or political expenses or debts." As indicated in these responses, we anticipated that the WDC venture would be able to repay the acquisition loans and other loans and expenses identified herein,

244 See Preliminary Report at 94-102.

245 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 22, at 43-44; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 22, at 53-54.

246 See Preliminary Report at 102-14.

because, again as previously stated, we expected that the WDC venture would ultimately become self-financing.²⁴⁷

Beyond that, Mrs. Clinton indicates that she knows a number of the donors and was probably acquainted with certain others of them, although she would not say that she knew any of them "well."²⁴⁸

President Clinton states that he did attend the fund raiser but does not believe that Senator Fulbright attended, although McDougal had scheduled the event in the hope Senator Fulbright would be able to attend. President Clinton recalls nothing about the circumstances of any contribution that Senator Fulbright may have given.²⁴⁹ President Clinton indicates that he was acquainted with a number of the contributors but he knows nothing about the source of the funds they used to make the contributions, nor does he know how much, if any, of the money obtained through the contributions was used to repay his debt to the Bank of Cherry Valley.²⁵⁰ No contrary evidence has been found.

3. 1986-1988: David Hale and the International Paper deal.

The Preliminary Report discussed a \$300,000 loan to Susan McDougal made by David Hale's Capital Management, Inc., \$25,000 of which was used to fund part of a purchase of land from International Paper Realty Company made in the name of Whitewater.²⁵¹ The discussion noted press reports that Hale claims President Clinton pressured him into making the loan.²⁵²

President Clinton states:

I don't know what "alleged claim" David Hale has made. I don't recall any conversation with David Hale about loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty, or any entity owned by the McDougals, and I am certain

²⁴⁷ Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 21, at 50.

²⁴⁸ *Id.*, answer to Interrogatory No. 21(c), at 52.

²⁴⁹ Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 21(a) and 21(b), at 39-40.

²⁵⁰ Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 21(c)-21(h), at 41-43.

²⁵¹ See Preliminary Report at 115-22.

²⁵² *Id.* at 115.

I never "pressured" Hale or any company he owned to make any loan.²⁵³

Mrs. Clinton states that she did not have any conversation with Hale about loaning money to the McDougals or Madison Guaranty.²⁵⁴ Both of the Clintons state that they had no knowledge of the \$300,000 loan made by Capital Management to Susan McDougal dba Master Marketing.²⁵⁵

Whitewater bought the International Paper parcel in October 1986. Shortly thereafter, McDougal sent the Clintons a "status report" letter dated November 14, 1986.²⁵⁶ The RTC's interrogatories asked about this letter. Mrs. Clinton answered and President Clinton incorporated by reference her answer. Mrs. Clinton states that she believes that she and her husband received the letter, but she cannot recall the circumstances. With regard to McDougal's offer to have Charles James go over Whitewater's books with the Clintons, she says that the Clintons relied on McDougal's representations and did not feel a need to review the books. Mrs. Clinton states that she was encouraged by the letter to the extent that it suggested that Whitewater would have sufficient income to settle its affairs and be wound up when the debt was finally paid off.²⁵⁷

Mrs. Clinton also describes discussions that the Clintons had with McDougal at about this time about getting out of Whitewater:

I don't recall whether we had specific discussions with Jim McDougal about his letter, but I know that we did have discussions with him at about this time concerning our getting out of WDC. As I recall these discussions, Jim asked us to surrender our equity in the company to him or to him and Susan, because he believed they could use the company's losses for "tax purposes," as his letter says, although I do not know what those "tax purposes" were. My husband and I were not averse to doing this, since WDC by this time was a venture in which we had spent

253 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 23(a), at 44-45.

254 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 23, at 54-55.

255 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 23(c), at 45; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 23(c), at 55.

256 See Preliminary Report at 119-20.

257 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 24(a), at 56-57.

a great deal of money and received no return, but we did not want to be in a position of losing whatever equity we had in the company while still being personally obligated on the mortgage loan at Citizens Bank in Flippin and on the Lot 13 loan which was, as of this time, at the Security Bank of Paragould. As I recall our discussions, it proved impossible to get my husband and me released from these loans, so we ultimately declined to surrender our equity in WDC to the McDougals. During these discussions, neither of the McDougals suggested that we should contribute more money to the venture.²⁵⁸

Mrs. Clinton says that at no time before 1989 did she know anything about the purchase by Whitewater of 810 acres of land from International Paper Realty Corporation; to the contrary, she believed that Whitewater was in the process of winding up its affairs.²⁵⁹ No contrary evidence has been found.

G. 1985-1992: Whitewater after the land was gone.

1. The bulk sale to Ozark Air and its assumption of some of the debt.

The Preliminary Report discussed the bulk sale of Whitewater's remaining lots to Chris Wade's Ozark Air in May 1985 and the periodic reduction thereafter in the amount owing on the Citizens Bank mortgage loan, culminating in its final repayment in May 1992.²⁶⁰ Asked why between July 1986 and May 1992, the Clintons did not repay the Citizens Bank mortgage loan, Mrs. Clinton answered:

As previously indicated, it was always intended that this mortgage loan would be repaid by the income stream generated by the escrow contracts from lots that had been sold. *We saw no reason to prepay the mortgage personally.* The mortgage was ultimately paid off completely, as were all the WDC bank loans which my husband and I signed for at the Union Bank, the Bank of Cherry Valley, the Bank of Kingston (Madison Bank and Trust), and the Security Bank of Paragould. To the best of my knowledge, my

258 *Id.*, answer to Interrogatory No. 24(b), at 57-58.

259 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 24(c), at 59-60. President Clinton incorporated by reference his wife's answer to this interrogatory. Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 24, at 46-47.

260 See Preliminary Report at 123-25.

husband and I never signed for a WDC loan at Madison Guaranty Savings & Loan or any other savings and loan association.²⁶¹

The reference to "prepay[ing]" the mortgage is puzzling. The loan was a series of one- or two-year notes. It was not a long-term amortizing mortgage.

2. The decline in the recourse debt.

The Preliminary Report discusses the partial conversion of Whitewater's debt from debt that was recourse to the shareholders to debt that was nonrecourse. It noted that the advances from McDougal and McDougal-controlled entities effected this change; they, instead of the banks, became the project's principal creditors.²⁶² In its interrogatories, the RTC asked the Clintons why, between the end of fiscal year 1981 and fiscal year 1986, the Clintons spent essentially nothing on Whitewater. Mrs. Clinton responded:

We made a financial contribution to the project whenever we were requested to by the McDougals. There were many years in which the McDougals did not ask for a contribution. As already indicated, however, we expected the project to be essentially self-financing when the requisite number of lots had been sold. Indeed, Jim McDougal wrote to us in 1981 that "[t]hings are looking pretty good at Whitewater as our receivables run about equal to what we owe." DKRT900101, attached hereto at Tab 26(A). Please see my response to No. 7(c), supra.²⁶³

As noted above, the Interest Funding Loan, if signed by the Clintons, might raise a contrary inference, but that inference would apply to 1982-1983. The recourse debt did not decline significantly until 1985-1986.

3. Operations and cash flow in fiscal years 1985 and 1986.

As noted above, both of the Clintons indicate that they knew little before 1992 about Whitewater's lot sales between 1980 and 1985, Whitewater's cash flow between 1980 and 1986, the McDougals' expenditures on the project

261 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 26(f), at 68 (emphasis added).

262 See Preliminary Report at 125.

263 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 26(b), at 67.

between 1980 and 1986, or the source of the McDougals' money.²⁶⁴ Similarly, in response to Interrogatory No. 20, the Clintons again state that they have no knowledge of the source of funds that Whitewater used between 1984 and 1986 to pay down bank loans.²⁶⁵ Asked whether the Clintons knew at any time between 1978 and 1986 that they had not spent nearly as much on the Whitewater project as had the McDougals, Mrs. Clinton answered: "We did not know, in this time period, precisely what our and the McDougals' respective financial contributions to the project were."²⁶⁶ No contrary evidence has been found.

4. The Lyons report.

The Preliminary Report discussed the conclusions of the Lyons Report and reconciled the Lyons Report's calculation of the Clintons' total investment in Whitewater (\$46,137) to the total investment figure presented in the Preliminary Report (\$35,970).²⁶⁷ In her interrogatory answers, Mrs. Clinton presented numbers that differ slightly from those presented in the Preliminary Report. Based on her review and her counsel's review of the available records, she said she believes that the Clintons spent over \$46,600 on Whitewater, as follows:

the \$37,849.93 which we had expended through calendar year 1986 (please see my response to No. 15(d)(3) and 15(d)(8), supra), \$2561.33 in interest payments on the Security Bank of Paragould Loan in 1987, \$1473.60 in interest payments on that loan in 1988, \$1275.15 in real estate taxes in 1988, \$291.35 in real estate taxes in 1989, \$345.15 in franchise taxes in 1990, and \$2839.24 in 1991 for accounting work to prepare various tax filings for WDC.²⁶⁸

264 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

265 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 20, at 38-39; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 20, at 49.

266 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 26(c), at 67.

267 See Preliminary Report at 129-31.

268 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 26(a), at 66-67.

For the most part, any inconsistency between these numbers and those that appear in the Preliminary Report is more apparent than real.²⁶⁹ In their interrogatory answers, the Clintons used calendar years. For the most part, the Preliminary Report uses Whitewater's fiscal year. That one difference explains several of the apparent inconsistencies.²⁷⁰

The remaining apparent inconsistencies between Mrs. Clinton's interrogatory answers and the Preliminary Report also can easily be reconciled. Apart from timing differences explained above (fiscal versus calendar year), the sole difference between Mrs. Clinton's statement and the Preliminary Report about advances in 1981 is that the Preliminary Report excluded \$243.82 paid to Citizens Bank of Jonesboro, whereas Mrs. Clinton did not.²⁷¹ The same is true with respect to Mrs. Clinton's answer about advances through 1986: The sole differences are timing differences (fiscal versus calendar year) plus the \$243.82 paid to Citizens Bank of Jonesboro.²⁷² Finally, Mrs. Clinton includes the \$1,000 received from Jim McDougal in 1992, whereas the Preliminary Report did not.²⁷³

5. The 1986 examination of Madison Guaranty, the cease and desist order and McDougal's final removal from Madison Guaranty and Madison Financial.

The Preliminary Report summarized the events leading to McDougal's removal from any connection with Madison Guaranty and Madison Financial.²⁷⁴ The Clintons state that they had no knowledge of the 1984

269 The same is true of inconsistencies between the numbers in the Preliminary Report and numbers found on the Vincent Foster "documents mentioning Whitewater in the files this office received from the White House on July 27, 1993." Letter from David E. Kendall to Bruce A. Encson, dated July 27, 1995, at 1. Those documents contain some numbers that differ from the numbers in the Preliminary Report. *E.g.*, DKSNO000058, DKSNO000068-71. The differences, however, do not seem material. Nor is there anything in these documents that suggests the Preliminary Report overlooked anything of consequence.

270 If one adjusts for the differences between a calendar year and a fiscal year, there are no inconsistencies whatsoever between the numbers set forth in Mrs. Clinton's answers to Interrogatories Nos. 15(d)(1) and 15(d)(7) and the numbers in the Preliminary Report.

271 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15(d)(2).

272 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15(d)(8). The report excluded this \$243.82 because no definitive connection between this loan and Whitewater has been made.

273 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15(d)(3).

274 See Preliminary Report at 131-32.

Report of Examination; the 1984 Supervisory Agreement; the 1986 Report of Examination; and the 1986 Cease and Desist Order. Neither Clinton recalls reading any of these documents or learning about its contents. Furthermore, Mrs. Clinton says that, as of July 17, 1986, she was unaware of the meeting in Dallas at which FHLBB officials instructed Madison Guaranty's board of directors to remove McDougal from his offices.²⁷⁵

6. Mrs. Clinton's work on matters related to Whitewater after Jim McDougal ceased to manage Whitewater's financial affairs.

The Preliminary Report discussed the Clintons' repurchase of Whitewater lot 13 after its purchaser, Hilman Logan, went bankrupt.²⁷⁶ In 1988, when the Company was unable to make payments on the Security Bank loan, the Clintons personally repaid the loan by buying lot 13 out of Hilman Logan's bankruptcy and then reselling this real estate. Mrs. Clinton explains:

At some point in 1987, I learned that Hilman Logan had declared bankruptcy, and I asked a bankruptcy lawyer at the Rose Law Firm, Allen Bird, to assist us in determining how to assure that our rights under the escrow contract were protected. In the 1987-1988 period, it became evident to us that WDC might not be able to pay off the Security Bank loan. In 1988, Mr. Bird was able to negotiate with the Hilman Logan estate and with the federal bankruptcy trustee in Mississippi an arrangement whereby my husband paid \$8000 of our own funds into the Bankruptcy Court and personally acquired the Logan estate's equity in lot 13. . . . In the meantime, the Ozarks Realty Company had negotiated for us the sale of Lot 13 to John and Marilyn Lauramoore for \$27,500. . . . After this sale, my husband and I were able to pay off the remaining principal and interest at the Security Bank, pay the seller's closing cost on the transaction, recover our \$8000 personal investment, and realize \$1640, which we reported as a capital gain on our 1988 tax return.²⁷⁷

The documentary evidence is consistent with this explanation.

275 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 16(b), at 30-31; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatory No. 16(b), at 33, and Interrogatory No. 17(g)(5), at 38.

276 See Preliminary Report at 133-36.

277 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 12(f), at 23-24 (citations omitted).

The Preliminary Report also discusses Mrs. Clinton's efforts in 1988 and thereafter to tend to Whitewater's affairs and, in particular, its delinquent taxes. It mentioned Mrs. Clinton's efforts to obtain a power of attorney from Jim McDougal.²⁷⁸ In her answer to interrogatories, Mrs. Clinton describes at great length her attempts to obtain a power of attorney from the McDougals in 1988 and the difficulties she had reaching them and attempting to straighten out the affairs of Whitewater.²⁷⁹

7. The Clintons sell their remaining interest to McDougal.

The Preliminary Report discusses the transaction in 1992 by which the Clintons sold their remaining interest in Whitewater to McDougal for \$1,000.²⁸⁰ Mrs. Clinton states that the purpose of the agreement was to divest all of the Clintons' interests in Whitewater. The document was negotiated by Jim Blair and drafted by Vincent Foster. When Mrs. Clinton signed the agreement, she did not know that the McDougals had signed a document purporting to assign McDougals' Whitewater stock to Jim McDougal's mother, Lorene McDougal, if indeed they had. The Clintons also were unaware of the International Paper litigation.²⁸¹

The Clintons did not attend the closing meeting of December 22, 1992, at which McDougal bought the Clintons' interest in Whitewater for \$1,000. President Clinton states that, until he answered the RTC's interrogatories, he had not seen Vincent Foster's memorandum of this closing meeting.²⁸² Mrs. Clinton cannot recall seeing the memorandum either, but she thinks she may have seen it or one like it.²⁸³ Regarding Jim McDougal's purported minutes, which Foster received in silence, Mrs. Clinton states that she had not previously seen the minutes and, she says, the purported minutes are inaccurate

since [she] did not either personally or through counsel, attend a meeting of the Board of Directors of WDC on December 22, 1992,

278 See Preliminary Report at 136-37.

279 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 25(a), at 60-63.

280 See Preliminary Report at 137-38.

281 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 25(e), at 64-65.

282 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 25(c), at 48.

283 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 25(d), at 64.

at which "a discussion of the old business of the corporation was held, and all actions of the corporation up to and including this meeting were ratified."²⁸⁴

H. The Clintons' knowledge.

The Preliminary Report posed but did not answer the question whether the Clintons knew about the McDougals' advances to Whitewater, about the source of the funds used to make those advances or about the source of the funds used to make payments on bank debt. In light of the evidence received since the completion of the Preliminary Report, the RTC is in a better position to address these questions.

The Clintons answer these questions by stating that they had no knowledge of these matters. For example, in response to Interrogatory No. 15, both of the Clintons indicate that they knew little before 1992 about Whitewater's lot sales between 1980 and 1985, Whitewater's cash flow between 1980 and 1986, the McDougals' expenditures on the project between 1980 and 1986, or the source of the McDougals' money.²⁸⁵ Similarly, in response to Interrogatory No. 20, the Clintons state that they have no knowledge of the source of funds that Whitewater used between 1984 and 1986 to pay down bank loans.²⁸⁶

Interrogatory No. 19 asks the Clintons about their knowledge of certain facts detailed at length in the various parts to this interrogatory. The Clintons do not provide any such information. Instead, in identical "global responses" they say they do not know whether the facts are accurate or not, and they also assert:

As previously indicated, the McDougals exercised control over the management and operations of WDC for the period of its active existence. My wife and I signed extensions or renewals of various WDC-related bank loans, but we did not receive annual reports or regular financial summaries and were not informed of all the actions taken in the name of WDC. We did not know what expenditures the McDougals made on WDC's behalf, the sources

²⁸⁴ Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 25(f), at 65.

²⁸⁵ Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

²⁸⁶ Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 20, at 38-39; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 20, at 49.

of these expenditures, or their nature. As was contemplated from the inception of the venture, we were passive investors and relied upon the McDougals to manage and operate it.²⁸⁷

Putting aside for the moment the legal significance of the phrase "passive investor,"²⁸⁸ the evidence is essentially consistent with this assertion. For the relevant period (ending in 1986), the evidence suggests that the McDougals and not the Clintons managed Whitewater. The evidence does not suggest that the Clintons had managerial control over the enterprise, or received annual reports or regular financial summaries. Instead, and as the Clintons suggest, their main contact with Whitewater seems to have consisted of signing loan extensions or renewals.

This point can be demonstrated by presenting a chronology of the documents identified in this investigation that are addressed to or written by the Clintons pertaining to Whitewater.²⁸⁹

<u>Date</u>	<u>Document</u>	<u>Description</u>
<u>1978</u>		
06/19/78	DKRT900145	Union Bank promissory note.
07/27/78	DKRT900179	Letter from Wade to the McDougals and the Clintons (but addressed only to the McDougals) regarding the closing on the Whitewater property.
08/02/78	DKRT900087	Citizens Bank of Flippin promissory note.
08/02/78	DKRT801033	Citizens Bank mortgage.
09/07/78	DKRT900180	Letter from Wade to the McDougals and the Clintons regarding the closing statement and a survey.

287 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 19, at 35-36; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 19, at 46.

288 See pages 77-78 below.

289 Some press accounts have included chronologies that list contacts between the Clintons and the McDougals other than those listed below. Because no evidence has been found that these conversations pertained to Whitewater, they are not listed here.

12/29/78	DKRT801348	The Clintons' check to Great Southern Land Company for \$10,130.58.
<u>1979</u>		
06/19/79	DKRT900147	First extension of Union Bank note.
08/06/79	DKRT800433	Demand notice from Citizens Bank of Flippin to the McDougals and the Clintons (addressed only to the McDougals' address).
09/17/79	DKRT900151	Second extension of Union Bank note.
09/30/79	DKRT800938-39	Warranty deed from the McDougals and the Clintons to the Company.
11/09/79	CBF0271	Extension agreement for the Citizens Bank mortgage loan.
12/17/79	DKRT900155	Third extension of Union Bank note.
12/29/79	DKRT801346	The Clintons' check to McDougal for \$237.50, reimbursement of interest paid.
12/29/79	DKRT801344	The Clintons' check to Citizens Bank for \$4,752.88.
<u>1980</u>		
01/15/80	DKRT900157	Letter returning canceled second extension of Union bank note.
08/05/80	DKRT800529	Extension and modification agreement with Citizens Bank.
08/21/80	CBF0274	Affidavit warranting the purpose of the Citizens Bank mortgage loan.
08/23/80	DKRT801342	Check for \$9,000 made out in blank and ultimately given to Citizens Bank.
12/16/80	MBT000000087 DKRT900163 DKRT900019	Mrs. Clinton borrows \$30,000 from Madison Bank.

12/28/80	DKRT900021	Warranty deed transfers lot 13 to Mrs. Clinton.
<u>1981</u>		
02/17/81	DKRT400932	The Clintons' check for \$243.82 to Citizens Bank.
06/30/81	DKRT800762	The Clintons' check for \$300 to Madison Bank.
08/01/81	DKRT800742	The Clintons' check for \$300 to Madison Bank.
08/05/81	CBF0282	Extension agreement for the Citizens Bank loan.
09/26/81	DKRT800762	The Clintons' check for \$300 to Madison Bank.
10/06/81	DKRT900101	Letter from McDougal to Mrs. Clinton enclosing an extension agreement for signature. The letter states that "Things are looking pretty good at Whitewater as our receivables run about equal to what we owe. The only problem is our inability to sell the house on the property because of high rates."
10/12/81	DKRT900100	Letter from Mrs. Clinton to McDougal enclosing a signed copy of an extension agreement for the Citizens Bank mortgage loan.
11/10/81	DKRT900044	Letter from Wade to the Clintons confirming that lot 13 had been sold to Hillman Logan.
11/23/81	DKRT800758	Letter from Chris Wade to President Clinton enclosing a warranty deed for lot 13.
12/09/81	DKRT800748-50	Escrow contract for lot 13.
12/27/81	DKRT800763	The Clintons' check for \$600 to Madison Bank.

1982

02/20/82	DKRT101036	The Clintons' check for \$20,744.65 to Madison Bank.
03/01/82	DKRT400989	Letter from McDougal to President Clinton confirming that the Citizens Bank of Jonesboro loan is part of the Clintons' investment in Whitewater.
04/13/82	DKRT100500	Extension agreement for the Bank of Cherry Valley loan.
08/05/82	DKRT700318	Letter from Theresa Pockrus, EVP, Citizens Bank, to Mrs. Clinton.
08/11/82	DKRT400134	Letter from Mrs. Clinton to Pockrus.
11/01/82	DKRT400134 CBF0222	Interest Funding Loan promissory note.
11/01/82	CBF0322	Extension agreement for the Citizens Bank Mortgage Loan.

1983

09/19/83	DKRT100934	Letter from Mrs. Clinton to McDougal enclosing a tax statement for lot 13.
09/30/83	DKRT400136-37	Letter from Security Bank of Paragould to President Clinton enclosing proceeds of the loan.
09/30/83	DKRT400155	Promissory note signed by President Clinton.
09/30/83	SBP0081-82	Loan application (unsigned).
10/14/83	DKRT700112	Extension agreement for Citizens Bank Mortgage Loan.

1984

09/30/84	DKRT200764	Extension agreement for Security Bank of Paragould loan.
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10/01/84	DKRT700556	Letter from Mrs. Clinton to McDougal regarding a notice of final payment received from Security Bank of Paragould.
10/04/84	DKRT101073	Letter from McDougal to Mrs. Clinton enclosing a check for Security Bank of Paragould.
10/04/84	DKRT500917	Whitewater check for \$4,811.19 to Security Bank of Paragould.
10/05/84	DKRT400142	Security Bank of Paragould's notice of past due loan payment addressed to President Clinton.
10/15/84	DKRT700388	Security Bank of Paragould's notice of past due loan payment addressed to President Clinton.
10/22/84	DKRT100735	Letter from Mrs. Clinton to McDougal regarding unpaid property taxes.
11/05/84	DKRT500941	Whitewater check for \$143.65 to Mrs. Clinton relating to property taxes paid on lot 13.
11/21/84	DKRT700307-08	Letter from McDougal to Mrs. Clinton, which reads in full: "I urgently need your personal financial statement to renew the Whitewater note at Flippin."
11/26/84	DKRT700113	Extension agreement for the Citizens Bank Mortgage Loan.
12/12/84	DKRT700414	Memorandum from McDougal to Mrs. Clinton asking the Clintons to sign their financial statement.
<u>1985</u>		
03/26/85	DKRT800557	Memorandum to President Clinton regarding arrangements for the campaign fund raiser to be held at Madison Guaranty.

04/04/85	-	Date of the campaign fund raiser, which President Clinton attended.
10/11/85	DKRT200358	Extension agreement for the Security Bank of Paragould loan.
<u>1986</u>		
02/03/86	DKRT700305	Letter from Security Bank of Paragould to President Clinton enclosing a statement of interest paid.
06/23/86	DKRT700341-45	Note from Carolyn Huber to Mrs. Clinton: "I did not get to speak to Jim. The lady in his office told me you sold the property late last year. She asked that I send the bill to Jim—so I did today." See DKRT700334.
10/22/86	DKRT700334-35	Memorandum from Carolyn Huber to Mrs. Clinton regarding property tax issues on lot 13.
11/14/86	DKRT200475	Letter containing a "status report" on Whitewater sent to McDougal to the Clintons.
11/20/86	DKRT700302	Notice of payment due, sent by Security Bank of Paragould to President Clinton.
12/06/86	DKRT200683	Letter from McDougal to the Clintons regarding the Citizens Bank mortgage.
12/30/86	DKRT400999	The Clintons' check for \$1,635.51 to Security Bank of Paragould.

I. Analysis.

The foregoing list contains essentially all of the documents regarding Whitewater that seem to have been addressed to, or written by, the

Clintons.²⁹⁰ These documents do not disclose much of substance about Whitewater's sales or its sources and uses of funds. At most, they show that the Clintons signed some checks and bank documents. If such documents were signed in the presence of the McDougals, these occasions could have led to conversations in which questions were asked about Whitewater. That, however, is speculation; in fact, the documents and the interviews reveal no evidence of such conversations. Therefore, on this record, there is no basis to assert that the Clintons knew anything of substance about the McDougals' advances to Whitewater, the source of the funds used to make those advances or the source of the funds used to make payments on bank debt.

In particular, there is no evidence that the Clintons knew anything of substance about the transactions as to which the RTC might be able to establish liability as to people other than the Clintons: the \$30,000 McDougal bonus and transaction 8. There is no evidence that the Clintons knew anything about the bonus. As for the Dean Paul/David Hale/Capital Management transactions that apparently funded Capital Management's \$300,000 loan to Susan McDougal, there is nothing except an unsubstantiated press report that David Hale claims then-Governor Clinton pressured him into making the loan to Susan McDougal.²⁹¹ President Clinton has denied this.²⁹²

The press and others have focused to some extent on the question of whether the Clintons were "passive investors." From a legal point of view, their general status as passive investors (or, for that matter, as active investors) is not the issue.²⁹³ To state a claim against the Clintons (or anyone else), the

290 No attempt has been made to include documents created after December 31, 1986 or received by the Clintons after December 31, 1987. There is no evidence of any possible flow of funds from Madison Guaranty to Whitewater after November 1985. By July 1986, McDougal's control of Madison Guaranty had ended.

291 See Preliminary Report at 115. The RTC has not been able to depose or interview Hale.

292 "I don't know what 'alleged claim' David Hale has made. I don't recall any conversation with David Hale about loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty, or any other entity owned by the McDougals, and I am certain I never 'pressured' Hale or any company that he owned to make any loan." Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 23(a), at 44-45.

293 The term "passive investor" receives occasional use in the case law, mainly in tax and securities cases. E.g., *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 692 (1985) (rejecting the notion that the securities laws were designed to protect only "passive investors"); *United Fibertech, Ltd. v. Commissioner of Internal Revenue*, 976 F.2d 445, 446 (8th Cir. 1992) (holding that a passive investor cannot deduct research and experimental expenses in connection with a trade or business); *Casali v. Schultz*, 292 Ark. 602, 607, 732 S.W.2d 836, 838 (1987) (securities case; dissenting opinion); *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 783, 552 S.W.2d 4, 11 (1977) (securities). The Tax Reform Act of 1986 also added the phrase
(continued...)

RTC must plead and prove "fraud" or "intentional misconduct."²⁹⁴ Knowledge and intent are essential elements of these offenses; absent proof of such knowledge and intent, no claim can be stated.

On this record, there is no basis to charge the Clintons with any kind of primary liability for fraud or intentional misconduct. This investigation has revealed no evidence to support any such claims. Nor would the record support any claim of secondary or derivative liability for the possible misdeeds of others. As set forth in part II above, there is evidence that the McDougals and others may have engaged in intentional misconduct.²⁹⁵ There are legal theories by which one can become liable for the conduct of others—e.g., conspiracy and aiding and abetting.²⁹⁶ On this evidentiary record, however, these theories have no application to the Clintons.

To hold one liable for conspiracy or aiding and abetting, the RTC must plead and prove the elements of these theories. These elements include a general awareness of the wrongful acts being committed by others and an intention to assist in the commission of the primary offenses. There is no evidence here that the Clintons had any such knowledge or intent. Accordingly, there is no basis to sue them.

IV. RECOMMENDATION.

As part of its Madison Guaranty investigation, the RTC deemed it necessary to determine whether Whitewater caused losses to Madison Guaranty and, if so, whether anyone could be sued cost-effectively to make good those losses. Those tasks have been accomplished.

As stated above, the RTC has no cost-effective claims against anyone unless the Independent Counsel's prosecution of the McDougals and Tucker leads to convictions with respect to the loans described as part of transaction 8. Therefore, pending the results of the criminal case, it is recommended that no further resources be expended on the Whitewater part of this investigation.

293(...continued)

"passive activity" to the tax laws. 26 U.S.C. § 469, added by Pub. L. 99-514, Title V, § 501(a), 100 Stat. 2233. None of these usages has any significance for present purposes.

294 12 U.S.C. § 1441a(b)(14)(A)(ii). See Preliminary Report at 7.

295 As noted, the McDougals and Jim Guy Tucker have been indicted for an alleged criminal conspiracy involving the Dean Paul, Ltd. loan that is part of transaction 8. See McDougal Indictment ¶ 16, at 10-12.

296 See Preliminary Report at 9-11. See also part II.D above.

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Madison Guaranty McDougal Payments April 1982 - May 1986

This chart must be read together with the
 accompanying text.

Date of Deposit into Whitewater (Deposit Used To Fund Payment To - Amount)												Link to Madison Guaranty			
		Flowerwood Farms	Tucker-Smith- McDougal	Pembroke Manor	Madison Marketing	Smith-McDougal	Great Southern Land	Rolling Manor	Smith-Tucker- McDougal	Jim McDougal, Trustee	Amount of Deposit	Traceability Not Established	Traceability Can be Established	Not Reviewed	
1	September 10, 1984 (Bank of Cherry Valley - \$7,500)		X								\$7,500		\$7,500		
2	October 26, 1984 (Security Bank - \$4,811)			X		X	X		X		\$3,050	\$3,050			
3A	November 7, 1984 (Citizens Bank - \$18,000)	X									\$12,000		\$12,000		
B	November 20, 1984 (Same as 3A.)				X						\$5,566		\$5,566		
4	December 7, 1984 (Citizens & Cherry Valley Bank - \$9,276)		X	X				X		X	\$9,310	\$9,310			
5	January 10, 1985 (Bank of Cherry Valley - \$5,071)	X	X	X		X		X			\$4,660	\$4,660			
6	January 28, 1985 (Citizens Bank, Escrow Account - \$1,000)	X									\$1,000		\$1,000		
7	March 12, 1985 (Wade and others - \$5,625)		X	X				X	X		\$5,800	\$5,800			
8	April 9, 1985 (Ozarks Realty - \$25,000)	X									\$24,456		\$24,456		
9	November 8, 1985 (Security Bank - \$7,322)					X					\$7,500		\$7,500		
10	Other Fiscal Year 1986 Deposits (2)										\$2,700	\$2,700			
11	Fiscal Year 1983 and prior										\$2,168			\$2,168	
12	Fiscal Year 1984										\$18,584			\$18,584	
Total												\$104,294	\$25,520	\$58,022	\$20,752

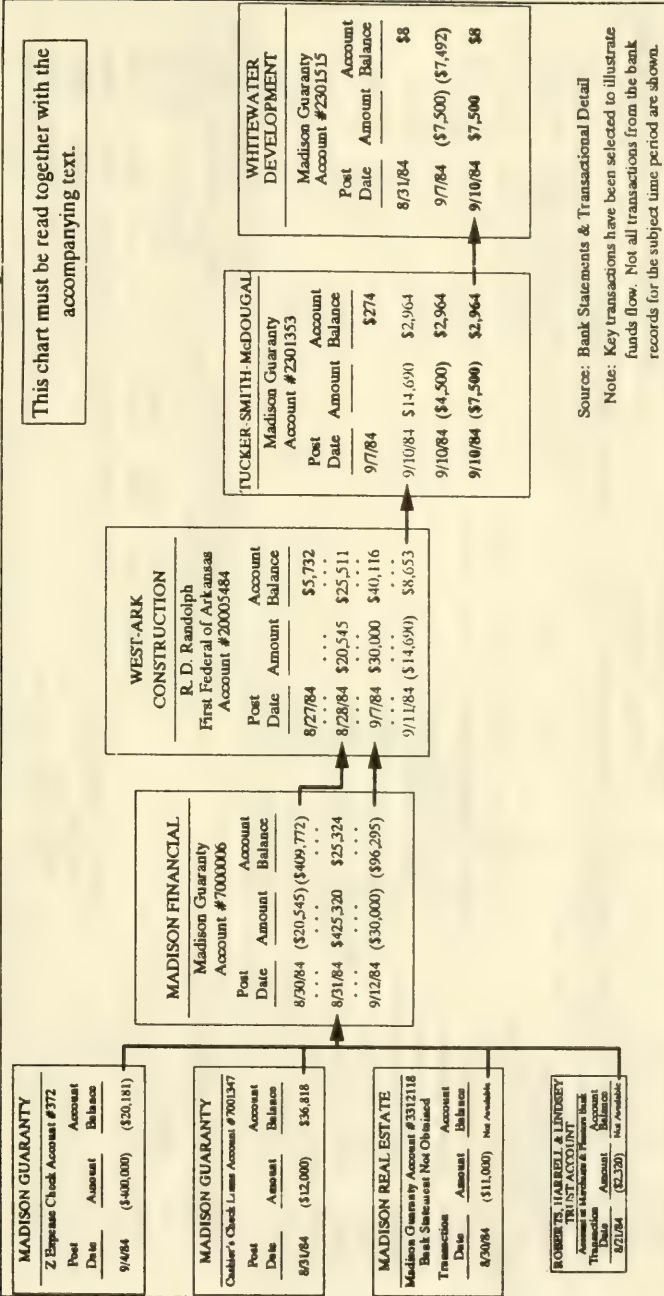
Note: Whitewater also received \$30,000 from Madison Financial (the McDougal bonus) on May 1, 1985. This payment has been linked to an earlier \$30,000 payment by Whitewater to Earth Movers, Inc. on April 23, 1985.

September 1984
Transaction

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Madison Guaranty Funds Tracing \$7,500 Deposit to Whitewater From Tucker-Smith-McDougal

This chart must be read together with the
accompanying text.



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November 7, 1984
Transaction

Madison Guaranty Funds Tracing \$12,000 Deposit to Whitewater From Flowerwood Farms

This chart must be read together with the
accompanying text.

MADISON FINANCIAL CORPORATION			
Madison Guaranty Account #7000006			
Transaction Date	Amount	Account Balance	
10/23/84	\$22,300	Not Available	
10/23/84	\$1,027	Not Available	
10/23/84	(\$6,000)	Not Available	
10/24/84	\$1,000	Not Available	
10/26/84	\$10,000	Not Available	
10/26/84	\$600,000	Not Available	
10/30/84	(\$6,651)	Not Available	

WEST-ARK CONSTRUCTION			
R. D. Randolph First Federal of Arkansas Account #20003484			
Post Date	Amount	Account Balance	
10/23/84	\$6,000	\$10,942	
10/30/84	...	\$6,028	
10/31/84	...	\$21,855	
11/6/84	(\$12,000)	\$8,991	

UNDETERMINED DEPOSITORS	
Transaction Date	Amount
11/5/84	(\$9,993)

FLOWERWOOD FARMS			
Madison Guaranty Account #2301361			
Transaction Date	Amount	Account Balance	
11/5/84	\$12,338	Not Available	
11/6/84	(\$12,000)	Not Available	

WHITEWATER DEVELOPMENT			
Madison Guaranty Account #2301515			
Post Date	Amount	Account Balance	
11/2/84		\$292	
11/6/84	(\$18,000)	(\$17,708)	
11/7/84	\$12,000	(\$5,708)	
11/14/84	\$285	(\$5,423)	
11/15/84	(\$15)	(\$5,581)	
11/15/84	(\$143)	(\$5,581)	
11/20/84	\$5,566	(\$15)	
11/27/84	\$144	\$129	

INDIVIDUAL DEPOSITORS	
Transaction Date	Amount
11/5/84	(\$238)

Source: Bank Statements & Transactional Detail

Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown.

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November 20, 1984
Transaction

Madison Guaranty Funds Tracing

\$5,566 Deposit to Whitewater From Madison Marketing

This chart must be read together with the
accompanying text.

MADISON GUARANTY			
Z Expense Check Account #372 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/2/84	(\$7,154)	Not Available	
11/13/84	(\$3,929)	Not Available	
11/18/84	(\$60)	Not Available	
11/19/84	(\$25,361)	Not Available	

MADISON FINANCIAL CORPORATION			
Madison Guaranty Account #7000006 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/2/84	(\$24,156)	Not Available	
11/2/84	(\$1,607)	Not Available	
11/9/84	(\$5,932)	Not Available	
11/19/84	(\$375)	Not Available	

WHITENER & ASSOCIATES			
Madison Guaranty Account #330750 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/5/84	(\$12,254)	Not Available	
11/13/84	(\$5,035)	Not Available	

CAMPOBELLO PROPERTIES			
Madison Guaranty Account #7000081 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/2/84	(\$4,500)	Not Available	
11/5/84	(\$2,181)	Not Available	

MADISON MARKETING			
Madison Guaranty Account #7011872 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/5/84	\$45,171	Not Available	
11/5/84	\$2,181	Not Available	
11/15/84	\$4,500	Not Available	
11/16/84	\$14,956	Not Available	
11/19/84	\$25,736	Not Available	
11/19/84	(\$5,566)	Not Available	

WHITEWATER DEVELOPMENT			
Madison Guaranty Account #2301515			
Post Date	Amount	Account Balance	
11/2/84	(\$144)	\$292	
11/6/84	(\$18,000)	(\$17,708)	
11/7/84	\$12,000	(\$5,708)	
11/14/84	\$285	(\$5,423)	
11/15/84	(\$15)	(\$5,581)	
11/15/84	(\$144)	(\$5,581)	
11/20/84	\$5,566	(\$15)	
11/27/84	\$144	\$129	

Source: Bank Statements & Transactional Detail

Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown.

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January 1985
Transaction

Madison Guaranty Funds Tracing

\$1,000 Deposit to Whitewater From Flowerwood Farms

This chart must be read together with the accompanying text.

MADISON FINANCIAL CORPORATION			
Madison Guaranty Account #7000006			
Post Date	Amount	Account Balance	
1/14/85	(\$46,000)	(\$54,688)	
1/16/85	\$117,456	\$29,041	

MADISON REAL ESTATE			
Madison Guaranty Account #3311596			
Post Date	Amount	Account Balance	
1/11/85	(\$46,000)	\$6,036	
1/11/85	\$46,000	\$6,036	

BILL HENLEY			
Madison Guaranty Account #3311634 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
1/9/85	\$46,000	Not Available	
1/23/85	(\$28,500)	\$2,109	

FLOWERWOOD FARMS			
Madison Guaranty Account #2301361			
Post Date	Amount	Account Balance	
1/21/85	...	\$867	
1/23/85	\$28,500	\$29,267	
1/24/85	(\$3,500)	\$25,767	
1/25/85	(\$6,202)	\$19,565	
1/28/85	(\$1,000)	\$15,065	
1/28/85	(\$3,500)	\$15,065	

WHITEWATER DEVELOPMENT			
Madison Guaranty Account #2301515			
Post Date	Amount	Account Balance	
1/24/85		\$446	
1/28/85	\$1,000	\$446	
1/28/85	(\$1,000)	\$446	

WHITEWATER DEVELOPMENT			
ESCROW ACCOUNT			
Citizens Bank Account #3175			
Post Date	Amount	Account Balance	
1/25/85	\$1,000	\$1,478	
1/29/85	\$262	\$1,740	
2/1/85	\$196	\$1,936	
2/4/85	\$146	\$2,082	
2/5/85	\$241	\$2,323	
2/6/85	(\$2,304)	\$19	

Source: Bank Statements & Transactional Detail

Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown.

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April 1985
Transaction

Madison Guaranty Funds Tracing \$24,456 Deposit to Whitewater From Flowerwood Farms

1985

This chart must be read together with the accompanying text.

STEPHENS SECURITY BANK			
Trans- action Date	Trans- action Date	Amount	Amount
4/1/85	4/1/85	(\$135,000)	

(Loan)

FLOWERWOOD FARMS			
Madison Guaranty Account #2301361			
Post Date	Account Date	Amount	Balance
4/2/85		\$1,551	
4/3/85	4/3/85	\$135,000	\$136,551
4/9/85	4/9/85	(\$24,456)	\$98,740

WHITewater DEVELOPMENT			
Madison Guaranty Account #2301515			
Post Date	Account Date	Amount	Balance
3/29/85		\$544	
4/1/85	4/1/85	(\$25,000)	(\$24,471)
4/9/85	4/9/85	\$24,456	(\$15)

OZARKS REALTY COMPANY			
Trans- action Date	Trans- action Date	Amount	Amount
3/22/85		\$25,000	

MADISON FINANCIAL CORPORATION			
Madison Guaranty Account #700006			
Post Date	Account Date	Amount	Balance
1/10/86		(\$75,949)	(\$1,435,283)

1986

CAPITAL MANAGEMENT			
Trans- action Date	Trans- action Date	Amount	Amount
4/3/86		(\$300,000)	

JAMES B. McDUGAL			
Madison Guaranty Account #424			
Post Date	Account Date	Amount	Balance
1/6/86		(\$18,777)	
1/7/86		\$75,949	\$43,731
1/23/86	1/23/86	(\$40,000)	(\$1,824)
4/8/86	4/8/86	\$300,000	\$65,018
4/8/86	4/8/86	(\$122,460)	\$65,018
4/8/86	4/8/86	(\$111,524)	\$65,018
4/15/86	4/15/86	\$111,524	\$163,641

MADISON GUARANTY			
Cashier's Check Account #7001312			
Post Date	Account Date	Amount	Balance
4/8/86		\$122,460	\$291,638
4/10/86	4/10/86	(\$111,524)	\$255,595
4/17/86	4/17/86	(\$10,936)	\$153,407

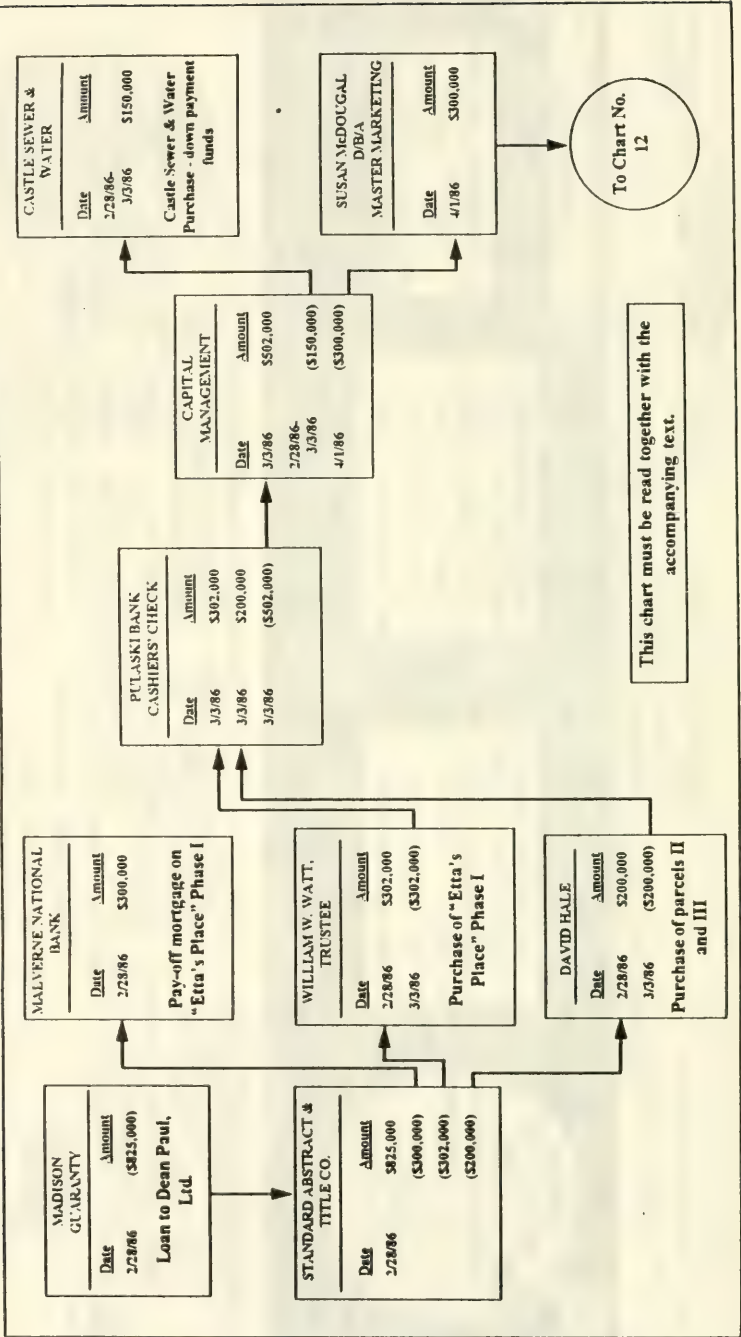
STEPHENS SECURITY BANK			
Trans- action Date	Trans- action Date	Amount	Amount
1/23/86		\$40,000	
4/7/86	4/7/86	\$111,524	

(Repayment
of Loan)

Source: Bank Statements & Transactional Detail
Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown. Statements have not been obtained for the entities with accounts at other banks, and therefore account balances are not available.

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Madison Guaranty Dean Paul, Ltd. Loan - Flow of Funds



November 1985
Transaction

Madison Guaranty Funds Tracing From Madison Marketing \$7,500 Deposit to Whitewater From Madison Marketing

MADISON GUARANTY			
Post Date	Amount	Account Balance	
10/28/85	(\$48,183)	(\$67,642)	

Whitener & Associates Madison Guaranty Account #207750 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	Not Available
10/25/85	(\$3,533)		

MADISON FINANCIAL CORPORATION Madison Guaranty Account #7000006			
Post Date	Amount	Account Balance	
10/28/85	(\$2,000)	(\$414,219)	
10/28/85	(\$17,068)	(\$414,219)	
10/28/85	(\$37,579)	(\$414,219)	
10/28/85	\$30,000	(\$414,219)	
10/28/85	\$70,000	(\$414,219)	
10/28/85	\$500,000	(\$414,219)	
10/30/85	(\$27,110)	(\$424,637)	

Campobello Properties Madison Guaranty Account #7000081			
Post Date	Amount	Account Balance	
10/31/85	(\$14,375)	(\$314,334)	

This chart must be read together with the accompanying text.

MADISON MARKETING Madison Guaranty Account #701872			
Post Date	Amount	Account Balance	
10/25/85	\$89,295	\$162,864	
...	
10/29/85	\$27,110	\$141,861	
...	
10/30/85	\$14,375	\$131,770	
...	
11/8/85	(\$7,500)	\$23,837	

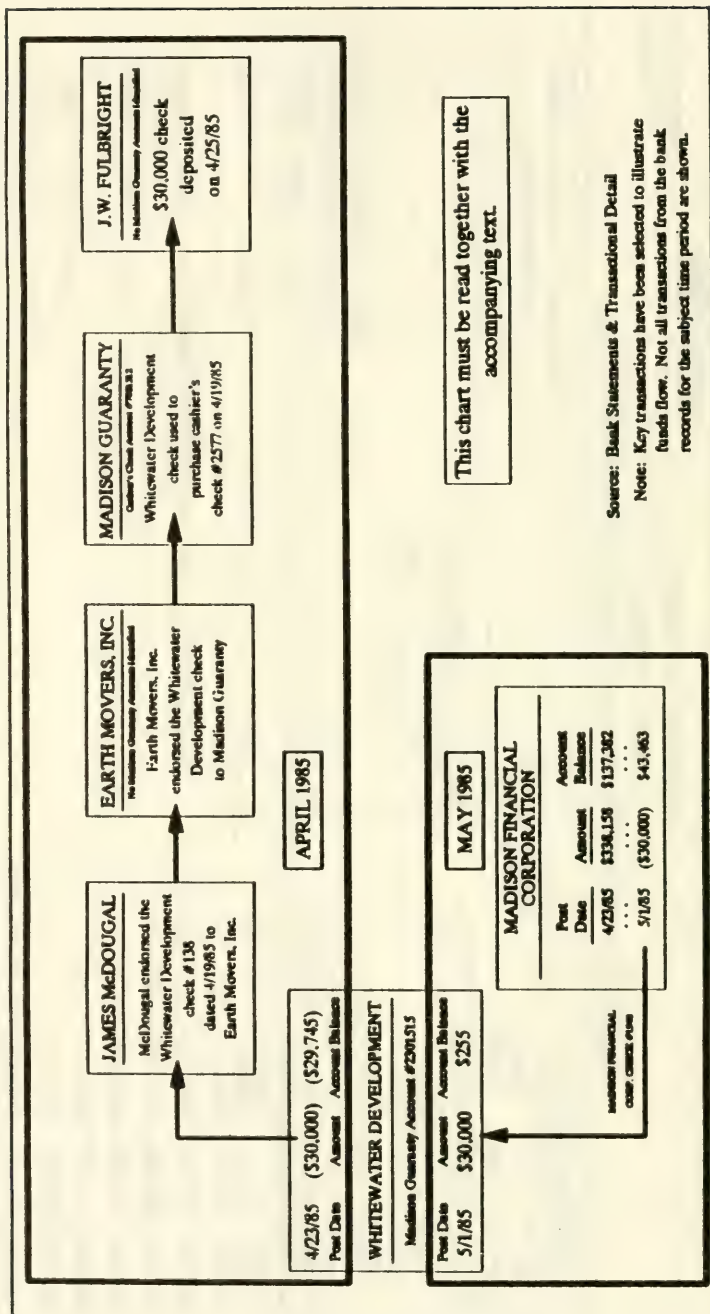
WHITEWATER DEVELOPMENT Madison Guaranty Account #2301515			
Post Date	Amount	Account Balance	
10/31/85		\$12	
11/8/85	\$7,500	\$7,512	
11/14/85	\$285	\$7,797	
11/15/85	(\$7,322)	\$475	

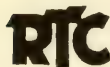
Source: Bank Statements & Transactional Detail

Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown.

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Madison Guaranty The \$30,000 Bonus Paid to James McDougal





Resolution Trust Corporation
Office of Inspector General, Office of Investigation

JOHN LATHAM, LATHAM & ASSOCIATES, was interviewed on July 12, 1995 at Little Rock, Arkansas by Special Agent E.P. HUSOK, RTC Office of Inspector General, and Special Agent SCOTT MALLON, FDIC Office of Inspector General. Also present during the interview was LATHAM's attorney, JAMES RHODES, of the law firm DOVER & DIXON. LATHAM was advised that he was to be interviewed relative to his knowledge of the ROSE Law Firm representation of the former MADISON GUARANTY SAVINGS and LOAN and the 1985 purchase of property owned by the INDUSTRIAL DEVELOPMENT COMPANY (IDC).

LATHAM said that he began working at MADISON GUARANTY as the Executive Vice President in 1983. He said that he was also a member of the Board of Directors of MADISON FINANCIAL CORPORATION, a subsidiary of MADISON GUARANTY.

LATHAM said that at one time, date not recalled, JAMES MCDUGAL suggested that MADISON GUARANTY use ROSE for some of the legal work at the institution. LATHAM said that, "MCDUGAL had friends over there, he suggested we use them." LATHAM said when asked who the friends were that it was HILLARY RODHAM CLINTON and others. MASSEY said that he also was familiar with a ROSE attorney, RICHARD MASSEY, with whom he had attended college at the University of Central Arkansas. LATHAM said that he did not specifically recall the manner by which ROSE was paid but knew that at some point the firm was on retainer which he heard was \$2,000 per month. LATHAM said that he did not know who the billing attorney at ROSE was.

LATHAM said that he recalled ROSE working on only one matter for MADISON GUARANTY. He said that the issue ROSE worked on concerned a broker/dealer operation that was purchased by MADISON. He said that he recalled that ROSE worked either on the acquisition of the broker/dealer operation, or on legal aspects of the acquisition after it had been done. LATHAM said that MASSEY worked on the matter because he had specifically asked for him to do so. LATHAM could not recall any specifics of what the services performed by ROSE in the matter were, except that he did recall one occasion when he and MASSEY met with BEVERLY BASSETT of the Arkansas Securities Department (ASD). He could not recall details of that meeting.

LATHAM was asked whether he recalled anyone from ROSE working on a preferred stock offering contemplated or proposed by MADISON GUARANTY. He said he did not. LATHAM said that he recalled that at some time in 1985, the institution was considering every possible means of increasing capital, and that a preferred stock offering was considered along with other means. He recalled that the decision was eventually made to raise capital by a subordinated debt offering. LATHAM said that he did not recall anyone from ROSE working on that issue, rather he recalled that JOHN SELIG of the law firm of MITCHELL, WILLIAMS, SELIG, JACKSON worked on the

By: E.P. HUSOK	Date prepared: July 16, 1995	File No: WA-94-0016
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matter.

LATHAM said that he did not recall ROSE working on any other legal matters at MADISON. He specifically said that he did not recall ROSE working on any real estate or participation loan matters. LATHAM said that he recalled that at some point in 1986 the institution received correspondence from HILLARY RODHAM CLINTON indicating that the firm was returning retainer funds or terminating the retainer agreement that had been in effect because the firm was uncomfortable in receiving a retainer when performing little or no legal services for the institution. LATHAM said that he was not aware of any discussions between anyone from the institution and ROSE concerning the end of the retainer arrangement, and did not know of any work ROSE performed for the institution after that time. He said that he believed that he would have advised MCDOUGAL of the correspondence after he received it, but had no specific recollection of having done so. LATHAM said that to his knowledge, the ending of the retainer agreement had nothing to do with the financial situation of the institution at the time.

LATHAM was asked his knowledge of the hiring of FROST & COMPANY by MADISON GUARANTY. He said that in the previous independent auditing firm hired by MADISON GUARANTY had been inexperienced and were taking longer and asking more questions to complete the institution audits than should have been necessary. LATHAM said that he and others at the institution, which was growing at the time, were attempting to straighten out the finances at the institution. LATHAM said that SELIG recommended FROST. He recalled meeting with JIMMY ALFORD and MICHAEL ROBINSON of FROST, and that the firm was hired to do the independent audits and tax work for the years of approximately 1984-1985.

LATHAM was shown a July 10, 1985 letter from MASSEY to the ASD concerning an application to engage in broker/dealer activities. He said that he had no recollection of the letter. He reviewed the attachments and said that some of the materials in Exhibits A-B appear to be institution balance sheets and consolidated income figures. He could not tell who had generated the figures in Exhibits A-B. He said that Exhibit C appeared to be a work sheet about which he had no knowledge. He noted that the materials at Exhibit D concerned the broker/dealer acquisition and were signed off on by institution employee GREG YOUNG.

LATHAM was shown a July 25, 1985 letter from LATHAM to the ASD in which MASSEY discussed net worth concerns that the ASD had, and by which letter MASSEY forwarded June 24, 1985 letters by LATHAM and ROBINSON. LATHAM said that he had no recollection of discussing the issues addressed in the letter with MASSEY, although he may have, or of having written the letter. LATHAM reviewed the attachments to his letter and said that he had no specific recollection of the documents or of who prepared them. LATHAM said he had no recollection of the ROBINSON letter. LATHAM said that he

did not recall ever asking FROST to produce any documents other than what would have been normally produced in connection with the audits and tax work.

LATHAM was asked about his knowledge of the involvement of SETH WARD at MADISON GUARANTY or MADISON FINANCIAL. He recalled that WARD and MCDUGAL were somehow familiar with each other, and that it was thought that WARD had the contacts that could bring business deals to the institution. LATHAM could not recall the nature of the agreement between WARD and MCDUGAL or MADISON FINANCIAL/MADISON GUARANTY, or whether WARD was an employee of either entity, but recalled that WARD was getting an automobile and possibly commissions on sales transactions.

LATHAM was asked his recollection of the IDC property and transaction. He said that he recalled that the IDC as an entity was indebted to several banks for property that the company held. He recalled that the property was at 145th Street, and that there was a building at 65th Street that was involved. LATHAM said that he did not recall the individuals at IDC or the banks that were involved, but believed that WARD was familiar with them and was able to bring them together to arrive at a deal for the property. LATHAM said that he did not recall being involved in any discussions involving the purchase. He said that he was sure that MCDUGAL had discussions with WARD concerning the matter, but LATHAM did not recall being a party to any of those discussions.

LATHAM said he had no recollection of any MADISON GUARANTY or MADISON FINANCIAL Board of Directors meetings where WARD may have been authorized by vote, resolution, or other matter to act as a representative or agent of MADISON GUARANTY or MADISON FINANCIAL in the matter of purchasing the IDC property, although there may have been such a vote or resolution.

LATHAM said that he did not recall any discussions he was involved in concerning the manner in which the purchase of the property was structured. He said that he recalled that he did know that part of the IDC property was to be purchased by MADISON FINANCIAL, and part by WARD. LATHAM said that he recalled that there were three reasons why the purchase was split between WARD and MADISON FINANCIAL. He said that there was in effect at the time an Arkansas state regulation that limited the amount of a state chartered institution's net worth that could be invested in a service corporation, and that he recalled that the limitation at the time may have been six percent. LATHAM said that a second consideration was that WARD wanted to make money on the transaction himself, and so wanted to purchase part of the property. A third reason, according to LATHAM, was that MCDUGAL really only wanted to purchase a portion of the IDC property that he wanted to use to develop a housing development, but that the IDC property had been presented as an all or nothing package purchase.

LATHAM said that it was his recollection that MCDUGAL believed

that the IDC purchase was a good deal, and that MCDOUGAL'S strategy was to sell off the parcels of the property he had not intended to be part of the housing development as quickly as possible to recoup the purchase price. LATHAM said that he recalled that there may have been some agreements to sale portions of the IDC property in place already at the time that MADISON FINANCIAL/WARD closed on the property to reduce risk to MADISON FINANCIAL, although he could recall no specifics. LATHAM said that he did not recall what agreements, if any, existed between WARD and MADISON GUARANTY, MADISON FINANCIAL, or MCDOUGAL in the transaction. When asked whether he was familiar with an agreement concerning an option by MCDOUGAL or the institution or MCDOUGAL to purchase property purchased by WARD, LATHAM said he had some recollection that there may have been an option but he had no knowledge of the specifics.

LATHAM said that he recalled that there was a sewer and water works included in the IDC purchase. He said that he did not know whether the sewer and water works were purchase by MADISON FINANCIAL or WARD as part of their respective purchases. LATHAM said that he did not recall JIM GUY TUCKER being involved at the purchase phase of the transaction, but believed that the sewer and water works was subsequently sold to a company set up by TUCKER and R.D.RANDOLPH to purchase and operate it.

LATHAM said that he did not recall MADISON GUARANTY or MADISON FINANCIAL engaging ROSE or any other law firm for legal services concerning the sewer and water works, compliance with Arkansas state laws or Public Service Commission regulations.

LATHAM said that he had no recollection of MADISON GUARANTY or MADISON FINANCIAL engaging ROSE or any other law firm to do research concerning whether any portion of the IDC property was "wet" or "dry" for purposes of establishing a brewery, tavern, or tasting room on any part of the IDC property. LATHAM said that he did recall that at that time, MCDOUGAL had a friend who had a brewery or was interested in establishing a brewery. LATHAM was asked if he was familiar with a WILLIAM or BILL LYON. He said that he had some recollection that a BILL LYON was a banker in some Arkansas town south of Little Rock, but had no recollection of a BILL or WILLIAM LYON being involved in the IDC transaction.

LATHAM said that he believed that MADISON FINANCIAL wrote a check to pay for the MADISON FINANCIAL portion of the purchase, and that MADISON GUARANTY loaned WARD at least part, if not all, of the purchase price of his portion of the property.

LATHAM said that he was not aware of any law firm that provided services to WARD, MADISON FINANCIAL, or MADISON GUARANTY in the purchase of the IDC property. LATHAM said he was not aware of any law firm that provided legal services to the banks or IDC in the matter.

LATHAM said that he is familiar with ROSE attorney THOMAS THRASH,

but did not recall him having any involvement in the transaction. He did recall that THRASH once represented some other party in a real estate transaction involving MADISON GUARANTY/MADISON FINANCIAL, but could recall no specifics.

LATHAM said that he could not recall whether he attended the closing of the IDC transaction, but may have as he recalled having lunch with WARD and MCDOUGAL at the Excelsior Hotel in Little Rock on the day the transaction closed.

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CHARLES A. WARDMAN

January 3, 1996

VIA FACSIMILE AND HAND DELIVERY

The Honorable Alfonse M. D'Amato
Chairman
United States Senate Committee on Banking, Housing,
and Urban Affairs
Senate Hart Office Building
Room 520
Washington, D.C. 20510-6075

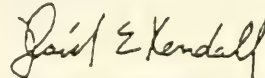
Dear Senator D'Amato:

You and your agents have stated that the recently released Rose Law Firm billing records for the Madison Guaranty representation impugn or contradict Mrs. Clinton's statements to investigators. The Associated Press reports today that you stated on yesterday's Brinkley show that the billing records "show 'tremendous inconsistencies' with Mrs. Clinton's sworn statements to federal regulators"

These are serious charges that are wholly unfounded and completely false. Since you have made these allegations, in fairness you ought now to state the specific factual basis for them.

I don't believe you can.

Sincerely,



David E. Kendall

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 CHARLES A. DREW

January 8, 1996

Letters to the Editor
The Washington Post
1150 15th Street, N.W.
Washington, D. C. 20007

Dear Editor:

An article in yesterday's Washington Post suggests that the recently discovered Rose Law Firm billing records "may contradict" Mrs. Clinton's sworn statements to the RTC. This innuendo is wholly false. Mrs. Clinton has accurately described her limited work on the law firm's representation of Madison Guaranty, and the billing records confirm her previous statements about that work.

The RTC interrogatories asked Mrs. Clinton questions about particular aspects of the law firm's representation related to Madison Guaranty, and the billing records confirm the accuracy of her responses. The interrogatories also asked about her personal knowledge of a list of Jim McDougal's real estate projects, including Castle Grande. Her responses to those questions were accurate as well.

WILLIAMS & CONNOLLY

Letters to the Editor
January 3, 1986
Page 2

Castle Grande Estates was a 400-acre mobile home development that was part of a 1050-acre tract purchased by Madison from the Industrial Development Company of Little Rock (IDC) in September 1985. Mrs. Clinton did not work on any matters related to Castle Grande Estates, and the particular RTC interrogatory response cited by the Post addressed that project. Confusion may be created by the Post's apparent reference to the entire IDC development as Castle Grande.

In the last several months, we have attempted to answer questions about work the Rose Law Firm performed with respect to the property purchased from IDC. The law firm billing title for this matter was "Madison Guaranty - IDC." Much of the publicity about the Rose Law Firm's work related to the IDC property has focused on whether the firm had a significant role in Madison's acquisition of the real estate. As the billing records confirm, Mrs. Clinton did not work on the acquisition. She supervised later legal research relating to such state law issues as water/sewer service provision and the legality of allowing a brewery tasting room to be constructed.

Mrs. Clinton also billed two hours in May 1986 for option agreement work relating to land approximately one-half mile west of, and not related to, Castle Grande Estates. The billing records also reflect conversations with Seth Ward, who was working for Madison developing real estate projects. The

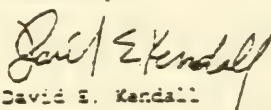
WILLIAMS & CONNOLLY

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conversations all occurred after the Madison acquisition of the IDC property.

Mrs. Clinton specialized in litigation, not real estate law. She was the billing partner on the Madison Guaranty account and appears to have averaged less than an hour a week over a 15-month period in her work on the Madison representation. She accurately answered the RTC's Interrogatory with respect to "Castle Grande" by stating that she did not believe that she had knowledge of it. And, quite apart from the Castle Grande mobile home development, her work on matters relating to the IDC development was quite limited, as previously indicated.

Sincerely,


David E. Kendall

OFFICIAL RECORD OF INTERVIEW
OFFICE OF INVESTIGATIONS
OFFICE OF INSPECTOR GENERAL

CASE NUMBER: IO96-094

PARTICIPANTS: Richard N. Massey, Attorney, Rose Law Firm
Tom Hardin, Attorney, Rose Law Firm
Walter B. Stuart, IV, Attorney, Vinson & Elkins
Alden L. Atkins, Attorney, Vinson & Elkins
[REDACTED], OIG, FDIC
[REDACTED] Special Agent, OIG, FDIC

DATE/TIME/LOCATION: October 4, 1994, 9:30 a.m., Rose Law Firm, Little Rock, AR.

INTERVIEW CONDUCTED: In Person x By Phone

PURPOSE: To obtain information regarding the Rose Law Firm's representation of FSLIC, FDIC, RTC and potential conflicts of interest.

RESULTS:

Richard (Rick) Massey was interviewed and provided the following information: Massey passed the bar exam in 1985 and then began working as an associate at the Rose Law Firm; in 1990 Massey became a partner at Rose. Since joining the firm, he has concentrated primarily on corporate finance and securities matters. He currently works in the Corporate Finance Division.

Concerning Rose's conflict of interest procedures, Massey said when he is initially contacted by a client he asks himself if Rose has represented any of the people adverse to the prospective clients. If Rose has represented any of these people, then it is a dead issue and he won't take on the client. Also, Massey will check with other Rose attorneys and if they advise Massey of Rose representations which are adverse to the prospective client, then Massey will not represent this client. Further, the intake or "responsible" attorney will notify all of the other Rose attorneys by E-mail, formerly via memo, of the prospective new client's adverse parties. The Rose attorneys are asked to advise the intake attorney if they know of any Rose representation of these adverse parties. Massey said that Rose employee Connie Bull also checks the computer data base which contains the identities of Rose clients to see if the firm has represented any of the adverse parties. If it is discovered that Rose has represented any of the adverse parties then it is a dead issue and the firm will not represent the prospective new client.

If it is not clear whether or not an issue is a conflict, the firm's conflicts committee considers the matter. Massey said the conflicts committee is charged with the interpretation of the conflicts laws. Massey

added that Rose attorneys Wilson Jones and George Campbell are currently on the conflicts committee; Webster Hubbell used to be on this committee. Massey said Rose attorneys consult with the conflicts committee when they can't decide if an issue is a conflict. If the conflicts committee decides that there is a conflict then it is a dead issue and the firm does not represent the prospective new client. Massey said he has never done any work whereby he has represented the FDIC, RTC or any other U.S. government agency. He has brought matters to the conflicts committee approximately three times whereby the committee has decided that there was a conflict.

Massey said that the younger, new associates are usually assigned to do the state regulatory work because they are usually cut and dried issues. He was assigned to represent Madison Guaranty Savings & Loan (Madison) before the Arkansas Securities Department (ASD) in 1985. Massey worked on two matters for Madison. One was getting Madison the authority to issue preferred stock. The other issue concerned the fact that Madison had acquired a broker/dealer and Madison wanted Massey to work on Madison obtaining the authority to operate the broker/dealer business.

Massey does not know how or why Madison selected the Rose Law Firm to represent them before the ASD. He did mention that he taught a securities law class in the Fall of 1984 and John Latham attended this class. Latham would occasionally call Massey with questions about the class. Massey expressed his belief that Rose was then, and still is today, the best securities firm around.

Massey was shown a letter dated July 10, 1985 from him to Beverly Bassett (then the Commissioner of the ASD), Nancy Jones and Charles Handley (both of the ASD). (attached) The letter concerns the application by Madison to engage in brokerage activities. He was also shown Exhibit A, Exhibit B and Exhibit C attached to this letter. (attached) Exhibit A is the financial statements of Madison Financial Corporation (MFC). Exhibit B is a worksheet calculating all investments in MFC by Madison. Exhibit C is a balance sheet of Madison. Massey said he received these documents from Madison and has no knowledge of Frost & Company preparing these documents. After reviewing these documents, Massey said it appears to him that Madison prepared them.

Massey explained that he closed his July 10, 1985 letter by saying to please call Hillary Rodham Clinton or him because it was appropriate procedure at the firm to name a partner as a contact in correspondence, since he was at the time only an associate. Massey was shown a letter dated May 14, 1985 from Beverly Bassett to Hillary Rodham Clinton concerning the preferred stock issue(attached). He was also shown a letter dated May 23, 1985, from Hillary Rodham Clinton to Jim McDougal concerning the ASD's approval to issue preferred stock(attached). Massey said he did the work involving the ASD but Clinton's name appeared on some correspondence since she was the partner.

Massey was also shown a copy of a letter, dated October 25, 1985 from him to John Latham where Massey advised that he was going to be out of the country until November 9, 1985(attached). Massey's letter stated if Latham has any questions concerning the preferred stock issue, he should advise Bill Kennedy of Rose. Massey explained that he was going on vacation and

he used Kennedy as a stand in point of contact. He does not believe Kennedy ever did any work on this Madison representation before the ASD.

Massey was shown a copy of a letter dated July 25, 1985 from him to Beverly Bassett, Nancy Jones and Charles Handley(attached). It concerns the application by Madison to engage in brokerage activities. In the letter, Massey refers the addressees to an attached letter from Frost & Company, Madison's independent accountant. Massey explains that the difference between Madison's net worth as reflected in its audited financials and as reflected in its net worth reports is a result of basic differences in the calculation of net worth under Generally Accepted Accounting Principles ("GAAP") and under Regulatory Accounting Principles ("RAP"). In his letter, Massey says that the enclosed Frost letter explains this in greater detail. Massey stated that he was relying on the Frost audit information when he prepared this letter. He did not endorse it, nor did he ever review the work done on the Frost audits of Madison. Massey had no dealings with any Frost employees, nor did he ever ask any Frost employees to prepare financial information for him. Massey added that at the time he was representing Madison before the ASD in 1985, he had no reason to believe there was anything wrong with the Frost audits. He said Frost & Company was a reputable firm.


Massey said the ASD agreed that Madison could issue preferred stock, but Madison never did so. ASD would also allow Madison to engage in broker/dealer activities, but only if Madison met a certain net worth. Massey does not believe Madison ever did engage in any broker/dealer activities.

Massey recalled attending one meeting with the ASD concerning the preferred stock or broker/dealer issue. John Latham and Charles Handley attended the meeting but he does not believe Hillary Clinton was at the meeting.

In 1989, when Rose was initially approached by the FDIC or RTC to pursue litigation against Frost & Company, Vince Foster came to Massey's office and asked him what Rose had done for Madison before the ASD. Massey recalled Foster asked him if he relied on the Frost audit data. Massey stated he told Foster what work he had done in this matter and asked Foster if this was a conflict. Foster responded that he did not think so, but it still had to be resolved. Sometime later, when the litigation became "hot and heavy," Foster told Massey that the government did not think this prior representation of Madison was a conflict and Peter Kumpe (attorney representing Frost & Company) shouldn't have any problem with it.

Massey stated that in 1985, he did not know who Seth Ward was. It was clearly after 1985 that he learned that Seth Ward was Webster Hubbell's father-in-law. Massey added that in the 1990 time frame it was generally known by the partners in the firm that Ward was Hubbell's father-in-law. Massey does not know of any work that Hubbell did for Seth Ward. Massey is familiar with P.O.M., Inc. He said that Rose represented this company in an antitrust case against Duncan Industries. Hubbell and another Rose attorney, Amy Stewart, represented P.O.M. in this litigation. The verdict, in 1991, was in favor of Duncan Industries. Massey stated he and Hubbell worked in different divisions at Rose. Massey

related he did not know of any "firewall" having been established at Rose concerning Hubbell and any issues involving Ward. Massey added, however, that any "firewall" arrangements which may be set up ar established only among the concerned attorneys on the particular issue and not normally every attorney in the firm. Further, these "firewall" are established as necessary on a case by case basis; Massey estimated that he has been awar of approximately 20 "firewalls" established per year at Rose.

Prepared by:  _____

Date: 11/1/84

Concurred by: _____

Date: _____

STATEMENT

Resolution Trust Corporation

Office of Inspector General
Office of Investigation

DateLittle Rock, Arkansas

I, Richard N. Massey, make the following statement to Phillip Sprague and Eric Nielson, who have identified themselves as Special Agents with the Resolution Trust Corporation, Office of Inspector General. This statement was prepared following my interview with Messrs. Sprague and Nielson on April 21, 1995, and is based on information I provided on that day.

1. Background.

I was hired by the Rose Law Firm ("Rose") in May 1984 and was admitted to the Bar in August 1984. I was placed on the Rose Law Firm letterhead upon passing the Bar. As an associate, I was paid a straight salary with a modest year-end bonus. I became a member of the firm (commonly referred to as a partner) in February 1989. I have been in the Securities Section of Rose since joining the firm. My primary area of expertise is corporate finance, which includes providing legal assistance and advice to entities seeking to raise money through public or private transactions. I came to Rose because I believe it is one of the best firms in Arkansas and in the region in the field of corporate finance.

2. Rose's Conflicts Procedure.

I have read Rose's Engagements and Conflicts policy, and I am generally familiar with it. To identify potential conflicts of interest, Rose attorneys follow the procedure set forth below: First, the attorney who is contacted by the potential client determines if the representation clearly would be adverse to a client known to him or her; if so, the attorney immediately rejects the representation or considers obtaining waivers from the appropriate clients. If the matter is declined, no forms are prepared and the attorney is not required to notify any other attorneys in the firm of his or her decision. Second, the attorney may ask some of the other attorneys in the firm if they know of a conflict. Third, if no conflicts have been identified thus far,

STATEMENT

Resolution Trust Corporation

Office of Inspector General
Office of Investigation

the attorney notifies all of the other attorneys in the firm of the proposed representation by e-mail and asks them to identify any potential conflicts. Typically the e-mail asks for responses by a specified date and time. Fourth, the attorney requests that the firm's conflicts database be checked for potential conflicts. Often that request is made by sending a copy of the e-mail to the administrative employee who maintains the conflicts database. Fifth, the names of new clients and matters are circulated throughout the firm in our Daily Briefs, also known as the "pink sheets". Sixth, at the end of each week a New Business Summary is circulated to the attorneys which identifies all the parties involved in new matters that week. Each step of the procedure is designed to elicit information from other attorneys in the firm about potential conflicts.

Although I do not recall clearly the conflicts procedure used in 1985, I believe it was much the same. The primary differences between the procedure in 1985 and today are the result of improved technology. Today, the conflicts database is kept on a computer, while in 1985 it was, I believe, kept on index cards. Also, today the attorneys generally circulate an e-mail to other attorneys asking for known conflicts, while in 1985 we circulated a memorandum. In 1985, our conflicts database of index cards was kept by Willie Mae Ethridge. She was replaced by Connie Bull, who maintains the electronic database today.

In general, there are two kinds of conflicts under the applicable rules of ethical conduct -- those that can be waived, and those that cannot. If the proposed representation would be directly adverse to a current client of the firm, then the firm may not accept the new matter unless the attorney reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. If the proposed representation would be materially adverse to the interests of a former client of the firm, then the firm may not accept the new matter if it is the same as or substantially related to the matter for which the firm represented the former client, unless the client consents after consultation. Although many conflicts may be waived by the client, Rose often decides for business reasons not to request a waiver and simply declines the new matter. For instance, a client who agrees to waive a conflict might be less inclined to retain the firm again in another matter. I personally have never sought a waiver from a client.

STATEMENT

Resolution Trust Corporation

Office of Inspector General
Office of Investigation

If the conflicts procedure identifies a potential conflict, then an assessment must be made whether there is an actual conflict and, if so, whether it can be waived. Often, that determination can be made by the attorneys involved. If they do not resolve the issue, then it is presented to the Conflicts Committee. I have never been a member of Rose's Conflicts Committee. The Conflicts Committee discusses the issue and communicates its decisions informally to the attorneys. The attorneys may appeal the Conflicts Committee's decision to the full firm.

An important part of the conflicts procedure is the New Client Form. When a new matter is accepted, the responsible attorney submits a New Client Form to the firm's accounting department. That form identifies the parties who will be involved and identifies the matter. The New Client Form provides the information required by the accounting department to open a new account number, and it is used to create the new client/matter list in the Daily Briefs. That procedure has been in place since I started with Rose.

3. Rose's Prior Representation of Madison Guaranty.

In 1985, I worked on two matters for Madison Guaranty Savings and Loan ("Madison Guaranty") -- a proposal to issue preferred stock, and a proposal to operate a broker-dealer subsidiary. Rose was not the primary outside counsel for Madison Guaranty. Rose did not provide savings and loan regulatory advice to Madison Guaranty; Madison Guaranty used another law firm for such regulatory matters instead. The matters I worked on involved corporate finance, for which Rose was particularly well suited because Rose is one of the best corporate securities firms in the region.

I do not recall after the passage of ten years precisely how Rose was retained by Madison Guaranty. I recall that I had several conversations with John Latham, the president of Madison Guaranty, before Rose was first retained. In the fall of 1984 or spring of 1985, I was a co-lecturer of a Securities Law class at the University of Arkansas at Little Rock, and Mr. Latham attended that class. Often, Mr. Latham spoke to me after class or called me on the telephone to discuss various securities law issues. On occasion, Mr. Latham's assistant, Pat Heritage, called with other questions about securities law. Generally, those questions involved how the corporate and securities laws would apply to various scenarios to raise money. I did not charge Madison

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Guaranty for those informal conversations, although I encouraged Mr. Latham to retain Rose.

a. The Proposal to Issue Preferred Stock.

In the spring of 1985, Madison Guaranty retained Rose to work on a proposal to offer preferred stock. Madison Guaranty gave Rose a very narrow assignment -- to determine whether Madison Guaranty was permitted by Arkansas law to issue preferred stock. Madison Guaranty did not ask Rose whether or in what amounts it should raise money or whether it needed additional capital to meet regulatory requirements.

The narrow assignment from Madison Guaranty involved a very straightforward legal issue. Under Arkansas law, a state-chartered savings and loan has the same powers as a corporation under the Arkansas Business Corporation Act, unless the savings and loan statute expressly states otherwise. Because the Arkansas Business Corporation Act clearly authorizes corporations to issue preferred stock, and because the Arkansas savings and loan statute does not state otherwise, I concluded that Arkansas law permitted Madison Guaranty to issue preferred stock. I personally did that research and analysis. Based on that straightforward analysis, it was clear that an Arkansas-chartered savings and loan could lawfully issue preferred stock and that the Arkansas Security Commissioner had little, if any, discretion to construe the law to the contrary.

On April 30, 1985, I wrote a letter to Charles Handley of the Arkansas Securities Department (the "ASD") setting forth my analysis and conclusion on the preferred stock issue. The final paragraph of that letter states the legal conclusion I had reached:

"Because the Arkansas statutes expressly give to an Arkansas chartered savings and loan all of the powers possessed by a corporation under the Arkansas Business Corporations Act, which powers include the power to create and issue a class of preferred capital stock, and because we find no express prohibition in Act 227 [the savings and loan statute] against the creation or issuance of such a class of preferred stock, we have concluded that Madison Guaranty's proposed capitalization plan is not inconsistent with Arkansas law. Should you require further information or assistance, please advise Hillary Rodham Clinton or Richard Massey of this firm."

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I signed the letter "Rose Law Firm". I did so because, in my view, the letter stated a legal conclusion, and letters stating legal opinions or conclusions generally were signed in the name of the firm. The final paragraph of the April 30, 1985 letter provides my name and Ms. Clinton's name so the ASD would know who to contact for additional assistance or information. I included my name because I had analyzed the issue and prepared the letter; I included Ms. Clinton's name because she was the billing partner on this matter.

Ms. Clinton was a partner in the Litigation Section of the firm. There is no fixed procedure at Rose by which a lawyer becomes the billing attorney on a matter, although Rose policy prohibits associates with less than three years' experience from being a billing attorney. At the time of the Madison Guaranty representation in 1985, I was a first-year associate and therefore could not be the billing attorney. I do not recall how Ms. Clinton became the billing attorney for this matter. Under the billing procedures at Rose, the billing attorney periodically receives reports from the accounting department of unbilled fees and expenses and prepares the bills to the client. Any other attorneys working on the matter may not necessarily know who else has charged time to that client matter number.

I addressed my April 30 letter to Charles Handley because he was in charge of the day-to-day regulatory matters at the ASD. I have a vague recollection that prior to our engagement Mr. Latham may have called the ASD and asked whether Madison Guaranty could issue preferred stock, and that he was told to put his request in writing. Mr. Latham asked Rose to send such a letter, and I was assigned the task. I do not recall how I received the assignment. A copy of the April 30 letter also was sent to Beverly Bassett, the Arkansas Securities Commissioner. I do not recall why I sent a copy to her, although I assume it was because she was the Securities Commissioner.

The ASD replied by letter dated May 14, 1985. The ASD's letter says the ASD agreed with my legal conclusion that Madison Guaranty was not restricted by Arkansas law from issuing preferred stock. The letter is addressed to Ms. Clinton and begins with the salutation "Dear Hillary". I do not know why Ms. Bassett used that salutation. I suspect that she saw both my name and Ms. Clinton's name in my April 30 letter as persons to contact, and I was such a new attorney that she did not recognize my name. I do not place any special significance on the form of the greeting being "Dear

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Hillary". I believe that she probably would have addressed any other Rose partner she knew in the same manner. I do not recall being present at any meetings with the ASD on the preferred stock issue.

I have been shown a copy of a letter from Ms. Clinton to James McDougal dated May 23, 1985 concerning the ASD's approval of the proposal to issue preferred stock. I do not believe that I wrote that letter. I have never met Mr. McDougal, and therefore correspondence from me to him would have been inappropriate.

On October 25, 1985, I sent a letter to Mr. Latham enclosing documents I had drafted concerning the proposed issuance of preferred stock. I informed Mr. Latham that I would be out of the country until November 9, 1985, and I invited him to contact William Kennedy, then a partner in the Securities Section, if he had any questions. I do not recall any further work on the preferred stock matter after that letter.

It has been suggested in the press that Rose used Ms. Clinton in an attempt to gain undue influence with the ASD on this matter. That is absolutely not true. I included Ms. Clinton's name in my April 30, 1985 letter as a person to contact for more information solely because she was the billing partner on this matter. Moreover, this was a straightforward legal issue on which the Securities Commissioner had little, if any, discretion to disagree with our interpretation of the statutes. Therefore, there was no reason even to try to exercise any political influence on Ms. Bassett. In any event, to my knowledge Madison Guaranty never issued the preferred stock.

b. The Proposal to Operate a Broker-Dealer.

The second matter I recall working on for Madison Guaranty involved a proposal to operate a broker-dealer subsidiary. Madison Guaranty felt it could save money if it sold its preferred stock through its own broker-dealer, and it acquired a company with a broker-dealer license. I did not work on that acquisition. Mr. Latham asked me to prepare an application to the Arkansas Savings and Loan Advisory Board ("ASLAB") requesting permission to operate the broker/dealer. I believe that I performed nearly all of the work on this matter. I do not remember discussing the broker/dealer issue with Ms. Clinton, although it is possible I did so. I do not recall that Ms. Clinton played any part in presenting the issue to ASLAB.

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The broker-dealer issue was, in my view, just as straightforward as the preferred stock issue. Under Arkansas law, a state-chartered savings and loan had all of the powers of a federally-chartered institution. I concluded that federal law permitted a federally-chartered institution to operate a broker-dealer in the manner in which Madison Guaranty sought to operate its own broker/dealer, which under applicable Arkansas statutes meant that state-chartered savings and loans could do so as well. I viewed this as a relatively clear-cut legal issue for which ASLAB had little, if any, discretion to disagree.

The billing attorney on this matter was Ms. Clinton. As with the preferred stock matter, Rose's policies prohibited me from being the billing attorney because I had practiced law less than three years.

On May 14, 1985, I submitted the Application to the Arkansas Savings & Loan Association Board for Approval to Engage in Activities Not Specified in Article 5B of the Rules and Regulations of the Arkansas Savings & Loan Association Board (the "Application") on behalf of Madison Guaranty. The Application requested permission for Madison Guaranty to provide brokerage services through a second-tier service corporation. I prepared the Application with information provided to me by Mr. Latham. I do not believe I submitted any financial statements with the Application.

Mr. Handley of the Arkansas Securities Department responded to the Application by memorandum dated May 22, 1985. Mr. Handley's memorandum raised eleven highly detailed questions and comments to the Application. I considered Mr. Handley's comments to be excessive; for example, he quibbled with the Rule under which the Application was filed (comment 1). Mr. Handley's exhaustive review of the Application shows that Madison Guaranty did not receive any favorable treatment by ASLAB.

In those comments, Mr. Handley raised for the first time questions about Madison Guaranty's financial status (comments 6-8). His comment 8 refers to the audited financial statements of Madison Guaranty as of December 31, 1984. I do not believe I submitted those audited financial statements to ASLAB. It is my understanding that savings and loans chartered under Arkansas law are required to submit audited financial statements to ASLAB, and I suspect that is how Mr. Handley obtained them. In his comments, Mr. Handley also asked for current financial statements of Madison

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Guaranty. I do not believe that ASLAB had the authority to condition its approval of a broker-dealer subsidiary on Madison Guaranty's financial condition. That is because the federal statute permits savings and loans to operate a broker-dealer without regard to financial condition, and state law did not separately impose a financial condition test.

I submitted a response to Mr. Handley's comments in a letter dated June 17, 1985. I obtained all the information in that letter from Mr. Latham and others at Madison Guaranty. I submitted with that letter an unaudited balance sheet of Madison Financial Corporation as of May 30, 1985, unaudited financial statements of Madison Guaranty as of March 31, 1985, and the quarterly Minimum Net Worth calculations as of March 31, 1985. I was given those documents by Madison Guaranty. They all appear to me to have been prepared internally by Madison Guaranty rather than by its outside accountants, Frost & Company. I did not independently review the financial information for sufficiency or accuracy; instead, I relied on the expertise of the persons who prepared the financial statements.. My June 17, 1985 letter merely transmitted this information.

Mr. Handley responded to my letter in a memorandum dated June 18, 1985. Mr. Handley raised several more highly detailed comments and questions about the Application. On page 1 of his memorandum, Mr. Handley also refers to Madison Guaranty's investments in Whitener & Associates and Campobello. I knew nothing about those investments. Mr. Handley also questioned Madison Guaranty's net worth and its adjustments to retained earnings. I knew very little about the Generally Accepted Accounting Principles (GAAP) and Regulatory Accounting Principles (RAP) under which those calculations were made. I am not an accountant, and I had no reason to independently question or verify those calculations, as this would have been clearly outside the scope of our engagement.

I responded to Mr. Handley's comments in a letter dated July 10, 1985. I transmitted with that letter the most recent financial statements of Madison Financial Corporation, a worksheet calculating investments in Madison Financial Corporation by Madison Guaranty, and Madison Guaranty's unaudited balance sheet as of May 31, 1985. All of the attachments to this letter were provided to me by Mr. Latham, and I believe they were prepared internally by Madison Guaranty rather than by Frost & Company.

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Mr. Handley responded to the July 10 letter in a memorandum dated July 17, 1985. Once again, Mr. Handley raised several highly detailed questions about the proposal and about Madison Guaranty's financial status. Mr. Handley also questioned certain adjustments made to Madison Guaranty's net worth as of December 31, 1984 in its audited financial statements. Neither I nor, to my knowledge, any Rose lawyer performed or had reason to perform an independent analysis of those adjustments under RAP and GAAP. All of the financial information I transmitted to ASLAB was supplied to me by Mr. Latham or other employees of Madison Guaranty, and I relied on their expertise for its accuracy. Review or verification of financial information was outside the scope of Rose's engagement, which was simply to obtain approval to operate a broker/dealer.

I responded to Mr. Handley's July 17 memorandum with a letter dated July 25, 1985. With that letter, I transmitted to ASLAB, among other things, a letter signed by Mr. Latham and a letter signed by Michael D. Robinson of Frost & Company. The letters by Mr. Latham and by Mr. Robinson discussed the adjustments to Madison Guaranty's net worth as of December 31, 1985 under RAP and GAAP. I was generally aware that there were differences between RAP and GAAP because new accounting principles had been promulgated and had been discussed in the press. However, I did not independently review the analyses by Mr. Latham and by Mr. Robinson, nor did I discuss their letters with anyone to determine whether they had applied the appropriate accounting principles correctly. I did not request these letters and I did not speak to anyone at Frost about its letter. Instead, I relied entirely on their financial expertise. My cover letter simply stated the conclusion that the adjustments to net worth were the results of differences between RAP and GAAP. I do not recall having any discussions with Mr. Latham or others about whether Madison Guaranty was solvent or about its financial condition generally.

On approximately August 27, 1985, a meeting was held with ASLAB to discuss the Application. Mr. Latham and I attended on behalf of Madison Guaranty, and Ms. Bassett, Mr. Handley and perhaps another person attended for ASLAB. Neither Ms. Clinton nor anyone else from Rose attended that meeting. At that meeting, Ms. Bassett informed us that she would not approve the Application until Madison Guaranty demonstrated its ability to meet regulatory net worth requirements by year-end. I do not recall any other meetings with ASLAB concerning the Application.

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After the meeting, I prepared a letter responding to Ms. Bassett's concerns. I believe the response is in a letter dated September 9, 1985, although I have seen a substantially similar version of that letter dated August 30, 1985. In that letter, I described two transactions proposed by Madison Guaranty -- the sale of preferred stock and the sale of limited partnership units. The letter was written to explain to Ms. Bassett how Madison Guaranty intended to meet the applicable regulatory net worth requirements. I do not recall why there are minor differences in the August 30 and September 9 drafts of the letter. I believe Mr. Latham provided me with the information necessary to draft the letter.

Ms. Bassett responded by letter dated October 17, 1985. Rather than authorizing Madison Guaranty to operate a broker-dealer subsidiary, Ms. Bassett conditioned the approval on Madison Guaranty actually meeting the regulatory net worth requirements by year-end. Because neither federal nor state law established net worth limitations on the ability of a savings and loan to operate a broker-dealer subsidiary, I do not believe the Securities Commissioner had the authority or discretion to impose such a condition on the Application. To the best of my knowledge, Madison Guaranty did not raise additional capital, did not satisfy the net worth condition imposed by Ms. Bassett and therefore never operated a broker-dealer.

I have been shown a copy of a letter from Stephen Cuffman, an attorney with Cuffman & Cuffman, to John Latham, dated October 9, 1985. The letter appears to address the proposed preferred stock issue by Madison Guaranty. I have not seen that letter before.

c. Other Matters for Madison Guaranty.

Mr. Latham told me that Madison Guaranty was considering forming a limited partnership and selling limited partnership units. I mentioned Madison Guaranty's idea to Mr. Kennedy, who had significant experience in such transactions. Mr. Kennedy agreed to be available in my absence to answer questions that Madison Guaranty might have about the idea. I do not recall any significant work on that issue. To my knowledge, Madison Guaranty did not sell limited partnership units.

I have been shown copies of two letters from Pat Jones (Heritage) dated August 8, 1985 and August 9, 1985. At the time, Ms. Heritage was an assistant to Mr. Latham. Those letters refer

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to moving the home office of Madison Guaranty, and the August 9 letter states that Sarah Hawkins should contact me about the proposal. I have no recollection of working on a proposal to move the home office. The August 9 letter also says that Sarah Hawkins should check with me concerning the valuation of directors' stock. I do not recall being consulted about that issue either.

I have been shown a letter from Beverly Watzke to me dated June 6, 1985, concerning a real estate closing in Colorado. I do not recall working on a real estate closing in Colorado for Madison Guaranty.

d. Rose's Return of the Retainer Fee.

I have been shown a copy of an unsigned letter from Ms. Clinton to Mr. McDougal and Mr. Latham at Madison Guaranty, dated July 14, 1986, terminating the retainer arrangement between Madison Guaranty and Rose. Ms. Clinton also returned the balance of the retainer fee to Madison Guaranty. The letter says that Madison Guaranty had been relying on a number of other law firms to provide ongoing representation of Madison Guaranty and that Rose's representation had been for isolated matters and had not been continuous or significant. That letter is consistent with my recollection of the limited work that Rose did for Madison Guaranty. I am not surprised that the retainer arrangement with Madison Guaranty was terminated because Rose did so little work for Madison Guaranty.

4. The RTC/Madison Guaranty Lawsuit Against Frost.

At approximately the time that Rose was contacted about representing the RTC/Madison Guaranty against Frost & Company ("Frost"), Webb Hubbell, then a Rose partner, circulated a memorandum asking attorneys in the firm to identify potential conflicts of interest. Although I do not have any present recollection that the memorandum was circulated in 1989, I have seen a copy of the memorandum and believe it was circulated at that time.

At some point in time, I also recall being contacted by Vince Foster, also a Rose partner at the time, about potential conflict issues involving Madison Guaranty. He explained to me that the government was considering retaining Rose to represent it and he asked me about the legal work I had done for Madison Guaranty in 1985. I do not remember whether this discussion involved only the

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Frost lawsuit or savings and loan litigation work in general. I told Mr. Foster about my assistance to Madison Guaranty in the two matters described above. I asked Mr. Foster if he thought there was a conflict, and Mr. Foster said that he did not think so but would discuss it with the government. Mr. Foster also asked me whether Rose had done any other savings and loan work. Mr. Foster was always very careful, and he often informed clients about issues that were not actual conflicts. I do not recall when this conversation occurred, but it was some time before Rose agreed to represent the RTC in the Frost litigation.

After I learned that Rose had been retained by the government in the Frost case, I asked Mr. Foster whether he had mentioned the prior representation of Madison Guaranty to the government. Mr. Foster said that he had discussed the issue with the government, but I do not believe he said who he had contacted. Mr. Foster told me that the government agreed that Rose's prior representation of Madison Guaranty did not pose a conflict of interest. Based upon my knowledge of Vince Foster as a careful lawyer of high integrity, I accept as true Mr. Foster's statement to me that he had discussed this issue with the government.

5. Other Matters.

I have been asked if I know someone named E.J. Massey. I do not, although there are a number of Masseys in Arkansas, and conceivably I could be related to him or her.

At the time I represented Madison Guaranty, I do not believe that I knew that Seth Ward was Webb Hubbell's father-in-law. I also do not believe that I knew Mr. Ward was on the Board of Directors of Madison Guaranty. Since doing the 1985 work for Madison Guaranty, I have learned Seth Ward is Mr. Hubbell's father-in-law.

6. Conclusion.

I believe that Madison retained Rose to work on the preferred stock proposal and the broker-dealer proposal because Rose is among the best law firms in the region to perform such securities work. I doubt that Madison Guaranty hired Rose in an effort to use whatever influence Ms. Clinton may have had to impress the Arkansas regulators. That is because Madison Guaranty hired Rose only for narrow and straightforward securities law issues and used another law firm for its ongoing regulatory matters. To my knowledge, Rose

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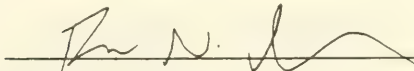
Office of Inspector General
Office of Investigation

did not have any discussions with the regulators about whether Madison Guaranty was undercapitalized or solvent, nor did we try to persuade the regulators to keep Madison Guaranty open.

I do not believe that the Arkansas regulators were influenced by Ms. Clinton's presence at Rose. In my view, the ASD and the ASLAB had little, if any, discretion to deny the requests submitted on behalf of Madison Guaranty. Nevertheless, Mr. Handley aggressively challenged the Application to operate a broker-dealer and raised numerous questions and comments at every turn. When ASLAB finally approved the Application, it imposed conditions that Madison Guaranty ultimately did not meet.

The speculation that the work I did for Madison Guaranty created a conflict of interest in the Frost litigation is unfounded. I do not believe that I submitted to ASLAB any financial statements prepared by Frost. Further, I did not independently review or analyze Madison Guaranty's financial condition, nor did I have the expertise to do so. I do not recall ever having dealt with Frost regarding Madison. Instead, I relied on the expertise of the employees and accountants of Madison Guaranty who prepared its financial statements, and I simply transmitted that information to the regulators.

I have read the foregoing statement consisting of 13 pages and it is true and accurate to the best of my knowledge and belief. I have initialed each page.



Signature of Maker

6/15/95

Date

ARKANSAS



SECURITIES DEPARTMENT

#1 CAPITOL MALL — 4B-208

LITTLE ROCK, ARKANSAS 72201

TELEPHONE 501-371-1011

May 14, 1985

Hillary Rodham Clinton
 Rose Law Firm
 120 East Fourth Street
 Little Rock, AR 72201

RE: Authorization and Issuance of a Class of Preferred Stock by
 Madison Guaranty ("Madison"), a Savings and Loan Association
 chartered under the laws of the State of Arkansas

Dear Hillary:

I have reviewed your letter of April 30, 1985, regarding the proposed authorization and issuance by Madison of a class of non-voting preferred stock.

I agree with your analysis and conclusion of the question whether an Arkansas chartered savings and loan association may under Arkansas law create, authorize and issue a class of preferred stock. Arkansas law expressly gives state chartered associations all the powers given regular business corporations under the Arkansas Business Corporation Act, including the power to authorize and issue preferred capital stock. Further, there is no express prohibition against such action contained in the Arkansas laws governing building and loan and savings and loan associations. Accordingly, as the Savings and Loan Supervisor, I concur in your opinion that Madison's proposed capitalization plan is not inconsistent with Arkansas law.

Very truly yours,

Beverly Bassett
 BEVERLY BASSETT
 Savings & Loan Supervisor

BB/ps

RS 000537

RECEIV

MAY 16 1985

COPY

ROSE LAW FIRM

A PROFESSIONAL ASSOCIATION
ATTORNEYS120 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201
TELEPHONE (501) 378-8431
TELECOMMER (501) 378-4308U. M. ROSE
1934-1913

May 23, 1985

PHILIP CARROLL
W. DAKE CLAY
C. JOSEPH GIBBS, JR.
GEORGE L. CAMPBELL
ROBERT C. RILEY, III
STARLEY C. PRICE
H. WATT SEXTON, III
W. WILSON JONES
VINCENT PORTER, JR.
WESLEY L. RUSSELL
ALLEN W. BIRD II
WILLIAM L. BISHOP
HILLARY RODHAM CLINTON
C. BRANTLY SUCE
TOM BOE
M. JANE DICKET
WILLIAM H. KENNEDY, III
KERRITH A. SHERWIN
DAVID A. SARGENT
RONALD H. CLARK

BARBARA J. GARRETT
JERRY C. JONES
THOMAS P. THORNER
CAROL L. JARROLD
JACKSON FARROW JR.
LEE S. SALEDGE
JIM HUNTER BIRCH
R. DAVID THOMAS, JR.
DAVID L. WILLIAMS
CATHERINE LASSITER
MICHAEL T. DOMOVAN
MICHAEL R. JONES
MARTIN S. THOMAS
BRYAN RALSTON WILEAN
RICHARD H. MASSEY
GARY H. SREED
J. GASTON WILLIAMSON
CHARLES W. BAKER
OF COUNSEL

Mr. Jim McDougal
MADISON GUARANTY SAVINGS & LOAN
16th & Main Streets
Little Rock, AR 72206

Dear Jim:

Enclosed is a letter for your files from Beverly Bassett, approving the proposed authorization and issuance of a class of non-voting preferred stock. We appreciate the opportunity to work for you and look forward to continuing success in resolving whatever questions arise as you pursue your plan for growth.

With best regards, I am

Sincerely yours,

Hillary
HILLARY RODHAM CLINTON

jkf
enclosure

cc: w/enclosure:
Mr. John Latham
Mr. Rick Massey

LAW OFFICE

WILLIAMS & CONNOLLY

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EDWARD BENNETT WILLIAMS 1920-1999
PAUL A. CONNOLLY 1922-1990DAVID E. KENDALL
(202) 434-5145

November 22, 1993

BY REGISTERED MAIL

Jerry C. Jones, Esquire
 Rose Law Firm
 100 East Fourth Street
 Little Rock, AR 72201

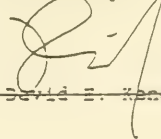
Dear Jerry:

It was good to talk to you today. I am enclosing herewith three file folders, labeled: A3530.1 MADISON GUARANTY LTD. OWNERSHIP Application/Brokerage Activities, A3530.2 Madison Guaranty - Net Worth - (1985) Preferred Stock Offering, and A3530.3 MADISON GUARANTY Preferred Stock Offering Corporate. which were among the late Vincent Foster's files. They appear to me to be files of Rose Law Firm documents. I thought it most appropriate to transmit them to you, for retention and storage.

I would be grateful if you would confirm for me the receipt of these files.

Best wishes for a good Thanksgiving!

Sincerely,



David E. Kendall

Enclosures

DEX/bb

RS 000381

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, JANUARY 16, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:05 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. We are going to make an announcement at this time. Senator Sarbanes has been held up in traffic and he has requested that we delay the meeting. When he arrives he would like an opportunity to confer with me, so we will start at 10:35 a.m. in deference to the Senator having made this request. I am sorry we didn't make the announcement sooner.

[Recess.]

The CHAIRMAN. The blizzard of 1996 continues to have its impact, and I don't mean that only because my colleague, Senator Sarbanes, was delayed but one of the things we were discussing was the requirement for the filing of our Committee's report on Whitewater on January 15. As the Resolution calls for, we have made every effort to prepare that report, but due to the blizzard and other circumstances—Committee scheduling, et cetera—we have reached an agreement, and I will propose that we seek unanimous consent to postpone the filing of that report until Monday, January 22. So I ask unanimous consent that the Committee agree to the filing of that report on January 22.

Would anybody like to be heard on that? If not, I ask the Clerk to record unanimous consent of this Committee for filing the report on January 22.

The Committee has been requesting for a period of time now, since the 25th of August, that the White House produce certain materials, E-mail in particular, and a copy of a New York Times editorial, December 20, 1993, which purportedly contains the President's handwritten instructions in the margin.

Now as it relates to the E-mail, we have received a letter from the White House Special Counsel, Jane C. Sherburne, in which she indicates, basically, a willingness to discuss a methodology of the

production of the E-mail. I had made statements previously that I believe we are entitled to the E-mails. Indeed, the Committee has voted subpoenas for that and for the December 20th, New York Times editorial which contains, purportedly, instructions by the President in his own handwriting to his Chief of Staff and to Mr. Lindsey.

I would hope that our discussions with Ms. Sherburne will be productive so that we can have, in a timely fashion, a schedule for the production of the E-mails, and the editorial I just mentioned.

I also want to acknowledge for the record that the other documents that we requested, Mrs. Clinton's briefing book, was turned over last evening to the Committee.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I think the record ought to also reflect the fact, as I understand it—I think I am correct in this—Counsel for the Committee did review that newspaper editorial and the President's handwriting, so the Committee knows the substance of what was said.

If I'm mistaken about that, I would like to be disabused of that notion, but I think, as I understand it, Counsel had an opportunity to examine that and to copy down, I think, everything that was written in the margins.

Mr. BEN-VENISTE. Yes, we did, Senator.

The CHAIRMAN. There still exists a need to produce this document. Indeed, I believe that the American people are entitled to it, and there is a question about the written instructions. Having said that, the Committee Counsel hopefully will have an opportunity to meet with Ms. Sherburne, either during one of the breaks or sometime thereafter, hopefully to avoid a continued confrontation or the possibility of a confrontation between the Committee and the White House.

I'm going to ask our witnesses to stand for the purpose of taking the oath.

[Whereupon, William H. Kennedy, Attorney, Rose Law Firm, Bruce R. Lindsey, Deputy Counsel to the President and Assistant to the President, and Neil Eggleston, Partner, Howrey & Simon, former Associate Counsel to the President were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. I'm going to ask if any of the witnesses, Mr. Kennedy, Mr. Lindsey, or Mr. Eggleston, have any statements that they would like to make prior to our starting?

Mr. Kennedy.

SWORN TESTIMONY OF WILLIAM H. KENNEDY, III ATTORNEY, ROSE LAW FIRM

Mr. KENNEDY. I do not, Mr. Chairman.

The CHAIRMAN. Mr. Lindsey.

**SWORN TESTIMONY OF BRUCE R. LINDSEY
DEPUTY COUNSEL TO THE PRESIDENT AND
ASSISTANT TO THE PRESIDENT**

Mr. LINDSEY. Mr. Chairman, just for the record, I am Bruce Lindsey, Deputy Counsel to the President and Assistant to the President. I have no opening statement.

The CHAIRMAN. Mr. Eggleston.

**SWORN TESTIMONY OF W. NEIL EGGLESTON
PARTNER, HOWREY & SIMON
FORMER ASSOCIATE COUNSEL TO THE PRESIDENT**

Mr. EGGLESTON. Mr. Chairman, again, my name is Neil Eggleston. I was Associate Counsel to the President from about September 1993 to about September 1994. I am now no longer affiliated with the White House. I have no statement, sir.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Kennedy, on November 5, 1993, you met with Mr. Kendall and other individuals at his offices in Williams & Connolly; is that correct?

Mr. KENNEDY. It is, Mr. Chertoff.

Mr. CHERTOFF. Mr. Lindsey, you were at that meeting?

Mr. LINDSEY. Yes, sir.

Mr. CHERTOFF. Mr. Kennedy, you were at the meeting?

Mr. KENNEDY. I was.

Mr. CHERTOFF. Mr. Kennedy, you prepared notes of the meeting in your own handwriting?

Mr. KENNEDY. That is correct, Mr. Chertoff.

Mr. CHERTOFF. You later typed up those notes yourself; right?

Mr. KENNEDY. That's correct.

Mr. CHERTOFF. And you furnished the handwritten and the typed notes to the Committee; right?

Mr. KENNEDY. That is correct.

Mr. CHERTOFF. You also furnished them to the White House; right?

Mr. KENNEDY. That is correct also.

Mr. CHERTOFF. Mr. Eggleston, have you had an opportunity to look at the notes?

Mr. EGGLESTON. I have.

Mr. CHERTOFF. Have you looked at the package of material the White House prepared to go out in connection with the notes?

Mr. EGGLESTON. I have.

Mr. CHERTOFF. Mr. Lindsey, same true for you?

Mr. LINDSEY. Yes, sir.

Mr. CHERTOFF. Mr. Eggleston, am I correct that at the meeting on November 5, one of the subjects of discussion was the investigation of David Hale being undertaken by the SBA?

Mr. EGGLESTON. Mr. Chertoff, I have read that in the notes. I have no reason to think the notes are inaccurate at all in that respect. I actually don't remember the various events that were discussed during the course of that meeting, but I have no reason to think that the notes are not accurate, and I see that that's reflected in the notes.

Mr. CHERTOFF. Just to nail it down, Mr. Kennedy, your notes, on the second page of your own typing, says, "Asked for records of Capital Services Management—SBIC, David Hale—indicted." Is that accurate?

Mr. KENNEDY. Mr. Chertoff, it will be very helpful to me if you gave me page references. Are you talking about the typed portion?

Mr. CHERTOFF. Right. Page 2 of the typed portion.

Mr. KENNEDY. One second, sir.

Mr. CHERTOFF. Very top of the page.

Mr. KENNEDY. I'm getting there.

Yes, that is correct.

Mr. CHERTOFF. Now having established that the subject of the SBA investigation of David Hale had come up and the indictment of David Hale had come up, Mr. Eggleston, on November 16, you called or contacted someone at the Small Business Administration to get documents that had been sent to the House of Representatives; is that correct?

Mr. EGGLESTON. That is. I testified about that at great length a few weeks ago.

Mr. CHERTOFF. And your testimony a few weeks ago is that you began by having a conversation with Mr. Spotila, the General Counsel, at some point in the morning on November 16th?

Mr. EGGLESTON. I don't mean to quibble with you. I think I began by calling someone in the Office of Legislative Affairs. Eventually I had a conversation with Mr. Spotila.

Mr. CHERTOFF. That conversation took place around 11 in the morning of November 16th; is that correct?

Mr. EGGLESTON. I remember it taking place on that date, Mr. Chertoff. I can't tell you that it took place at 11 in the morning.

Mr. CHERTOFF. I'm going to show you—and we'll give you a copy of it. There's a fax transmission sheet to you, November 16, 1993, 11:20 a.m., to Neil Eggleston from John Spotila; subject, Capital Management Services. Does that refresh your memory that, as of 11:20 a.m., you had had a conversation with Mr. Spotila?

Mr. EGGLESTON. I don't have any reason to dispute the time.

Mr. CHERTOFF. Now, you got a press release from Mr. Spotila in that initial fax; is that correct?

Mr. EGGLESTON. That's my recollection.

Mr. CHERTOFF. Then you wound up calling up Mr. Spotila and arranging to go over and pick up the documents that afternoon; is that correct?

Mr. EGGLESTON. Actually, Mr. Chertoff, could I correct what I just said? That is not actually my recollection. I think what I first got from Mr. Spotila was the letter from Administrator Bowles to Chairman LaFalce. That's my recollection of the first thing I got and that I had gotten, actually, the press release later in the day. But with that distinction from what you said yes, I then called Mr. Spotila and got the records later in the day.

Mr. CHERTOFF. You went over yourself to get the records; is that correct?

Mr. EGGLESTON. I did.

Mr. CHERTOFF. That was in the afternoon at some time?

Mr. EGGLESTON. Presumably it was sometime after 11 a.m.

Mr. CHERTOFF. Now, your testimony was, when you were here last time, that you did not have any conversations or coordinate this with Mr. Lindsey on November 16th?

Mr. EGGLESTON. I think my testimony was I didn't remember any conversations with Mr. Lindsey.

Mr. CHERTOFF. When you got the attachments, did you show the attachments to anybody?

Mr. EGGLESTON. I believe I did not show the attachments to anyone after I got the attachments.

Mr. CHERTOFF. Did you discuss the attachments with anybody?

Mr. EGGLESTON. I don't remember.

Mr. CHERTOFF. Do you remember talking about them with Mr. Nussbaum?

Mr. EGGLESTON. I don't specifically remember. It sure would make sense that I would have told them that I got the attachments. I don't specifically remember.

Mr. CHERTOFF. Did you show the attachments to anyone besides Mr. Nussbaum?

Mr. EGGLESTON. Actually, that was not the question you asked me. I don't think I showed the attachments to Mr. Nussbaum.

Mr. CHERTOFF. Did you show the attachments to anyone besides Mr. Nussbaum?

Mr. EGGLESTON. I don't believe that I did.

Mr. CHERTOFF. Did you discuss the attachments with anyone besides Mr. Nussbaum?

Mr. EGGLESTON. Last time I was here I was shown a document reflecting some communication I apparently had with Mr. Lindsey's secretary regarding the documents. I don't actually remember that, but that's perfectly possible and I don't dispute that.

Mr. CHERTOFF. Let's put it up. It's S 11399. I think it's in your package in front of you.

Mr. EGGLESTON. It is probably easier for me to look at it on a screen.

Mr. CHERTOFF. Well, whichever is easier. We'll put it up then.

Mr. EGGLESTON. I'm sorry, Mr. Chertoff, actually it's small enough, it's probably easier for me to find it in my pack.

Mr. CHERTOFF. We can follow along. "Neil Eggleston said"—

Mr. EGGLESTON. Let me get it first. Thank you, Mr. Chertoff. I have it.

Mr. CHERTOFF. "Neil Eggleston said the additional information is at SBA and is approximately a foot high. He has a call in to SBA to find out if it contains reference to either the President or Hillary. He can obtain a copy of the documents if it appears necessary but does not believe it is problematic." This is what you just referred to?

Mr. EGGLESTON. Yes, I was shown this the last time I testified.

Mr. CHERTOFF. This is a message received by Mr. Lindsey, produced from Mr. Lindsey's files, that you had left for him. Do you have any reason to doubt that?

Mr. EGGLESTON. I don't remember it. I've no reason to doubt it.

Mr. CHERTOFF. Now having looked at this document, does that refresh your memory that, in fact, sometime between your receiving the original cover letter by fax from the SBA and your going

over to pick up the rest of the documents, you had had a conversation with Mr. Lindsey about going over to get the documents?

Mr. EGGLESTON. Mr. Chertoff, it does not. In fact, this probably leads me to conclude that I never got—let me—if I can give you a slightly longer answer, it would make a lot of sense that I would have tried to talk to Mr. Lindsey. The reason I was getting these documents is that we were concerned that, having been produced to Congress, there was an issue about leaks, and I testified to that last time.

Mr. Lindsey at the time was the person who would probably have gotten the telephone call if there had been a leak and had been a press inquiry to the White House. It is absolutely as logical as it can be that I would have attempted to talk to Mr. Lindsey about this, because, in fact, that was the notion of what I was doing.

Mr. Chertoff, I don't remember actually doing it, and this document leads me to conclude that I probably didn't, and that I communicated with Mr. Lindsey through his secretary, which happened fairly frequently because Mr. Lindsey is extremely difficult to get in touch with.

Mr. CHERTOFF. You went and got the documents; right?

Mr. EGGLESTON. I did.

Mr. CHERTOFF. Did you communicate with Mr. Lindsey about the documents after you got them?

Mr. EGGLESTON. I don't—I don't believe that I did.

Mr. CHERTOFF. Well—

Mr. EGGLESTON. I am virtually certain that I never showed him the documents.

Mr. CHERTOFF. I asked you a little bit of a different question. Did you communicate with him afterwards, after you had come back from picking up the documents at SBA?

Mr. EGGLESTON. And I answered it. I don't recall. I don't believe that I did. I don't recall.

Mr. CHERTOFF. You went over in the afternoon; right?

Mr. EGGLESTON. Presumably it was sometime after 11:20 a.m.

Mr. CHERTOFF. All right. Because we know you got the first document by fax at 11:20 a.m. and then you went over the same day to pick up the documents yourself; right?

Mr. EGGLESTON. Mr. Chertoff, I am not disputing you. I don't mean to do this, but I don't have all these documents, so I have no reason to dispute what you just said. But I don't have these documents all in a big pack where I can follow the times and all that, so I just can't do it. I think that that's probably right, but if you asked me—

The CHAIRMAN. Mr. Eggleston, he's not asking you to comment on the content of the documents, so don't go through that. He's asking you whether you picked up the documents in the afternoon.

Mr. EGGLESTON. Mr. Chairman—

The CHAIRMAN. You went over and picked them up, didn't you?

Mr. EGGLESTON. Mr. Chairman, the only thing I don't want to do is tell him something I don't remember. He has shown me various documents. I have no reason to dispute that it happened in the afternoon, but if he's asking me do I remember, I don't. And I don't actually—you have shown me a fax sheet. I can't confirm from that that was my first document.

Mr. Chertoff, I don't mean to fight with you. I agree that it is very likely that the afternoon, based on what I have seen, is when I went over. I don't remember that.

Mr. CHERTOFF. I will move it beyond very likely. You will agree with me that you got a fax as of around 11:30 a.m. because I've just shown it to you; right?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. I would like to put up a letter dated November 16th. It says, "hand delivered."

The CHAIRMAN. You have it in your packet.

Mr. CHERTOFF. On Small Business Administration stationery, November 16 to Neil Eggleston. "Dear Neil: Enclosed is a copy of Erskine's letter yesterday to Chairman LaFalce with confidential attachments." It is dated November 16. Was this the cover letter that came with the package of material you picked up from the Small Business Administration?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. That helps us nail it down that it was on November 16th and sometime after 11:30 a.m. that you went over there and picked up the documents; correct? You would agree with me, that's—

Mr. EGGLESTON. That definitely appears to be true.

Mr. CHERTOFF. When you got back—

Mr. EGGLESTON. As I have said repeatedly, yes, that absolutely appears to be true.

Mr. CHERTOFF. When you got back with the attachments, Mr. Eggleston, did you call Mr. Lindsey and tell him that you had important documents relating to Whitewater to show him?

Mr. EGGLESTON. Did I call Mr. Lindsey and tell him that?

Mr. CHERTOFF. Yes.

Mr. EGGLESTON. I don't remember calling him.

Mr. CHERTOFF. Now let's put up S 12604. This is from Bruce Lindsey's call list which we received, I think, in the last couple of days. I think you have it in front of you.

Mr. EGGLESTON. I do.

Mr. CHERTOFF. Have you seen this before?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. When did you see it?

Mr. EGGLESTON. Yesterday.

Mr. CHERTOFF. You see where it says—Mr. Lindsey, this is your call list; right?

Mr. LINDSEY. That's correct.

Mr. CHERTOFF. Kept by your secretary?

Mr. LINDSEY. Yes, sir.

Mr. CHERTOFF. You have a computer program that keeps all of your calls and messages recorded?

Mr. LINDSEY. Well, she has to obviously input any information into it so there's no automatic, but anything that she writes down, she writes down on these call logs.

Mr. CHERTOFF. That's part of her responsibilities; right?

Mr. LINDSEY. That's correct.

Mr. CHERTOFF. In fact, you rely on her to be accurate in taking messages; right?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. It says over here, it is November 16, 1993, 4:58 p.m. "Important." Mr. Lindsey, you help us out here. Where it says name/agency, Neil Eggleston, that means the person who has left the message?

Mr. LINDSEY. That's correct.

Mr. CHERTOFF. That's you, Mr. Eggleston; correct?

Mr. EGGLESTON. Yes, I am Mr. Eggleston.

Mr. CHERTOFF. Then it says, "Has some Whitewater documents to go over with you. Will come by about 6 p.m."

Now, Mr. Eggleston, those Whitewater documents were the documents you picked up from the SBA; correct?

Mr. EGGLESTON. I think that's likely true. I don't know that to be true, but it's that day.

Mr. CHERTOFF. So would you agree with me that now that we have this message, we can ascertain that when you got back from the SBA with the documents, you called Mr. Lindsey up to set up an appointment to go over the documents with him?

Mr. EGGLESTON. I would say that that's true from this. I might point out that's not the question you asked me earlier. You asked me the question earlier whether I called and spoke to Mr. Lindsey and told him I had the documents, and the answer to that question is no.

Mr. CHERTOFF. I think I asked you whether you communicated with him but I don't want to quibble with you. The point is this: You now acknowledge that when you came back with the attachments from the SBA, you did, in fact, communicate with Mr. Lindsey, certainly through his secretary, to tell him you had received Whitewater documents; is that correct?

Mr. EGGLESTON. This would definitely make it seem that that's true. As I have said repeatedly, I don't actually remember that happening. This would certainly make it seem as if I had two communications with his secretary on that day with regard to these documents, and that makes a lot of sense. I mean, that's the reason I was getting these.

I don't remember, and in fact, I probably never spoke to Mr. Lindsey that day. I don't know what his recollection is about these documents. I think that's right. I think I communicated twice with his secretary about it and it makes sense that I would because that's the reason I got them, was in the event of press inquiries.

Mr. CHERTOFF. You considered this an important message; right?

Mr. EGGLESTON. Yeah.

Mr. CHERTOFF. You described these as Whitewater documents, even though they came out of the Small Business Administration, that dealt with David Hale; right?

Mr. EGGLESTON. Mr. Chertoff, you asked me earlier if I was sure that this related to these documents and I said that I thought it was likely. The only thing that gives me some pause is the use of the words "Whitewater documents," which, you know, this is not my word, this is the secretary's word. And the only reason I wonder whether for sure this is it is because it says Whitewater documents.

The CHAIRMAN. No, it is for you to say that this is not your word, I would have to say seems rather disingenuous. You called, went over to pick up documents. This is the recording of a secretary as

she took this message down. I mean, now let's not say that she mischaracterized your message. Are you suggesting that? Are you suggesting that she mischaracterized this message?

Mr. EGGLESTON. No.

The CHAIRMAN. All right. Let's set the record straight. You have done a lot of dancing.

Mr. CHERTOFF. You are not suggesting there was some other group of Whitewater documents you happened to get on the same day that you went over to the SBA to pick up the SBA documents?

Mr. EGGLESTON. Mr. Chertoff, I've told you, I think it was these documents.

Mr. CHERTOFF. And did you go over around 6 p.m. to see Mr. Lindsey?

Mr. EGGLESTON. I don't remember.

Mr. CHERTOFF. Did you show him the documents?

Mr. EGGLESTON. No.

Mr. CHERTOFF. What did you do with them?

Mr. EGGLESTON. I think I—Mr. Lindsey is very hard to get in touch with. I remember and I hope Mr. Lindsey remembers—that I never showed him these documents.

Mr. CHERTOFF. Well, you had had an E-mail message that you had left earlier in the day, asking him whether you wanted to get the attachments. We've seen that just a few minutes ago; right? You left a message for him earlier in the day. We just saw it a couple minutes ago, saying there is about a foot high of attachments, do you want me to get them; right?

Mr. EGGLESTON. Yes. I don't know that this is an E-mail, but yeah.

Mr. CHERTOFF. Whatever it is, a message; right?

Mr. EGGLESTON. Right.

Mr. CHERTOFF. You don't remember him getting back to you but you do remember going to pick up the attachments; right?

Mr. EGGLESTON. Yes, I do.

Mr. CHERTOFF. You come back with the attachments and leave an important message for Mr. Lindsey in which you say you have "Whitewater documents to go over with you. Will come by about 6 p.m." Does he get back to you on this message?

Mr. EGGLESTON. Mr. Chertoff, I did not, as I recall, I never got to him with these documents. I don't remember whether he got back to me himself or through his secretary, but I recollect—and again I don't know what Mr. Lindsey's recollection is—but I recollect that I never showed him these documents.

Mr. CHERTOFF. So your memory of this is you leave him a message asking whether he wants the attachments, you don't remember if he gets back to you, you go over and get the attachments yourself, personally. You come back, you leave him an important message saying you have Whitewater documents to go over with him. What did you mean by "go over with you?"

Mr. EGGLESTON. Mr. Chertoff, I don't remember leaving this message so I can't tell you what I meant by "go over," but presumably to show him the documents that I got from the SBA.

Mr. CHERTOFF. Which had to do with David Hale?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. Because you knew it was a matter that he was concerned about; right?

Mr. EGGLESTON. It's because, if the press inquiry came in, which was the reason I got it, it would in all likelihood have gone to Mr. Lindsey.

Mr. CHERTOFF. So you wanted him, Mr. Lindsey, to be prepared with confidential documents to respond to a press inquiry?

Mr. EGGLESTON. I wanted Mr. Lindsey to be able to be ready in the event of a press inquiry, in the event of a leak out of Congress, I wanted him to be aware of the documents, absolutely.

Mr. CHERTOFF. So now that you've—it's important for him to be aware of this in case there's a press inquiry, you leave this message. Do you go by at 6 p.m.? It says, "Will come by about 6 p.m." Did you come by about 6 p.m.?

Mr. EGGLESTON. Mr. Chertoff, I don't remember.

Mr. Chertoff, I have to give you a longer answer than this. What his secretary—and I think he'll confirm this—would do, he had an open door, you could walk in any time. He was frequently busy. You didn't schedule an appointment with him. He didn't have, at least for someone like me at my level, you didn't make an appointment to meet Mr. Lindsey because Mr. Lindsey spent time with the President and he spent time doing a variety of different things that were more important than meeting with me.

So his secretary would be a fulcrum of information on how to get in touch with him. And she would say come back at 6 p.m., I think he'll be available by then. You'd go back at 6 p.m., he'd either be there or he wouldn't.

Mr. CHERTOFF. But whether at 6 or 7 p.m., here it is, you had two discussions with him via the secretary about getting these documents. You have gone over personally to pick them up, you don't even send a courier over or messenger. It's because of concerns about press stuff. Whether it's at 6 p.m. or 6 a.m., when do you finally get together to go over the documents?

Mr. EGGLESTON. I don't think I did. I think very shortly after this, I learned that the Department of Justice was having difficulties with the fact that the White House had them, and then I was glad that I had never shown them to Mr. Lindsey or anybody else.

Mr. CHERTOFF. Several days afterwards that that came up?

Mr. EGGLESTON. I think it was not the next day but the following day.

The CHAIRMAN. Are you suggesting that you sat on these documents for 2 days and that you did not attempt to communicate or bring them to Mr. Lindsey? Is that what you're saying?

Mr. EGGLESTON. Yes.

The CHAIRMAN. So you received a message saying this is important, you went over yourself. What was your position?

Mr. EGGLESTON. Associate Counsel.

The CHAIRMAN. Associate Counsel of the White House. You went over to personally pick these up. Who gave them to you?

Mr. EGGLESTON. Mr. Spotila.

The CHAIRMAN. Mr. Spotila. So he gives them to you; right? You come back. Of course you don't remember if it was in the afternoon, do you? You come back and you call, and he's not there, and you leave a message with his secretary; right? Saying it's important; is

that true? Was it important that you went over and picked these up yourself?

Mr. EGGLESTON. The documents——

The CHAIRMAN. Why wouldn't you send a courier over?

Mr. EGGLESTON. I learned in my conversation with Mr. Spotila that the documents had been provided to the House Committee the day before.

The CHAIRMAN. Yes. So why didn't you send a courier over?

Mr. EGGLESTON. I think I testified before, my best recollection is that I went, picked these up either on the way to the Hill or the way back to the Hill from some other activity.

The CHAIRMAN. As a normal course of business? You went over because these documents were important and because you were concerned about press inquiries; right?

Mr. EGGLESTON. Yes.

The CHAIRMAN. And you wanted to react to those inquiries as they came in; right?

Mr. EGGLESTON. Right.

The CHAIRMAN. You wanted Mr. Lindsey to be able to do that; is that correct?

Mr. EGGLESTON. That's correct.

The CHAIRMAN. So that's why you yourself went over and personally got them; right?

Mr. EGGLESTON. Yes.

The CHAIRMAN. Then you brought them back. Now, you have them. You call up the secretary. You don't remember the actual call but the records reflect that you called and you left a message, and it said important; right? Was it important? It was important at that time, wasn't it?

Mr. EGGLESTON. It was important as of the time, of course.

The CHAIRMAN. It was time sensitive, wasn't it?

Mr. EGGLESTON. It was less time sensitive by the end of the day because evidently there hadn't been any press calls. It was time sensitive as of 5 p.m.

The CHAIRMAN. It was time sensitive as of 4:58 p.m.

Mr. EGGLESTON. If there were press calls. If there was no press call, it was not.

The CHAIRMAN. Now, you're not really concerned about the press. Something magical at 5 p.m., it's not important, but you say I'll get these over there at 6 p.m., don't you?

Mr. EGGLESTON. It says that I will come by about 6 p.m., yes.

The CHAIRMAN. I have these documents to go over with you. Is that what the message says?

Mr. EGGLESTON. That's what it says.

The CHAIRMAN. To go over. And now, you are going to tell this Committee you don't remember going over or going over the documents with him? Somehow it didn't become important because, 2 days later, the Justice Department made some announcement?

Mr. EGGLESTON. I——

The CHAIRMAN. Is that what you expect us to believe?

Mr. EGGLESTON. I am telling this Committee that I believe that I did not go over these documents with Mr. Lindsey. I don't know what his recollection is, but my recollection is we didn't.

The CHAIRMAN. So the records don't reveal the truth, then? Once again, the records aren't telling the truth?

Mr. EGGLESTON. Senator, you're going to have to draw whatever conclusions you want. I'm just telling—

The CHAIRMAN. Well, I am drawing a conclusion based on the sequence of events and the importance of going over there and bringing back the records. You wanted to be able to give Mr. Lindsey this information, but you want this Committee to believe that you didn't take the records over there to meet with him or see him.

Mr. EGGLESTON. I recall that I did not go over these documents with Mr. Lindsey. That is my recollection.

Mr. CHERTOFF. Mr. Lindsey, you got this message. Let me ask the question a different way. It is your regular routine to look at your messages?

Mr. LINDSEY. I am not sure I could testify truthfully that that's the case. If you will notice, this is page 11 of my telephone records that day. That means that—I don't know how many pages there were after 11. I've seen some of my days when I had 20 to 22 pages worth of telephone messages. At some point I try to look at my messages. Whether or not between 4:58 and 6 p.m. on a day I would look at telephone messages, I do not know.

I can tell you that, as I testified last time, I do not believe that I ever saw any of the SBA documents. For the first time I have seen an index of the SBA documents, and the only one that I think I have ever seen listed in the index is the indictment, which I received not from Mr. Eggleston or through the SBA, but through Little Rock.

Mr. CHERTOFF. So what we have here are faxes going back and forth with the SBA. Mr. Eggleston, whether you're on your way to the Hill or not, you personally stop to pick up the documents, not simply send someone else to do it. You get back and then you call or you reach out, communicate with Mr. Lindsey, and say you have an important message for him, you have to go over the Whitewater documents, you're prepared to come over yourself in an hour, and then it stops and everybody loses interest in it. Is that basically what you're telling us has happened here? It just stops at 6 p.m.? Nothing happens? After all the rush to get the documents, to leave an important message for Mr. Lindsey, you just let it drop?

Mr. EGGLESTON. Well, Mr. Chertoff, I don't remember whether I went over at 6 p.m. with the documents or not to see Mr. Lindsey.

Mr. CHERTOFF. You might have gone over?

Mr. EGGLESTON. I could have. I know I did not show him the documents. That I know, because—and I'll tell you why I know. The reason is that this became an issue within a very few days. This became an issue with—because of the call from the SBA regarding the Department of Justice, so unlike a lot of things I'm asked to testify about that really don't have any impact in my mind, this particular matter became a problem very quickly.

Let me just finish my answer if I could, and then you can do whatever you want to do.

I mean, this became a problem for me within a very short time after Tuesday, November 16. And I remember thinking to myself, I am glad I never showed anybody these documents because if there's a problem, at least I'm the only person who has seen them.

That is the reason—I mean, unlike a lot of questions you could ask me about things that happened 2½ years ago that I frankly wouldn't remember very clearly, just as I don't remember the details of all these calls and message logs, I remember thinking to myself at the time, thank heavens I'm the only person who saw them, and it's because it became a problem within 2 days of the 16th. So that's my recollection.

Mr. CHERTOFF. In fact, in December you were interviewed by the FBI because they investigated this; right?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. Did you tell the FBI that you had attempted to communicate with Mr. Lindsey to go over the documents with him?

Mr. EGGLESTON. I don't remember. I don't remember—I don't remember communicating with Mr. Lindsey about this, and I think the reason I don't remember it is that I never got to him. It's because, it looks to me, as if what I did was communicate with Mr. Lindsey through his secretary.

Mr. CHERTOFF. Mr. Lindsey, did the FBI interview you in December about this?

Mr. LINDSEY. No, sir, I don't believe so.

Mr. CHERTOFF. Do you know whether the FBI got this message indicating that Mr. Eggleston had an important matter for you to discuss about the Whitewater documents?

Mr. LINDSEY. I have no idea.

Mr. CHERTOFF. You don't know whether the FBI got this in December, do you?

Mr. LINDSEY. I have no idea, no.

Mr. CHERTOFF. Mr. Eggleston, did the FBI show you this document when they interviewed you?

Mr. EGGLESTON. No.

Mr. CHERTOFF. You don't know that they had it either?

Mr. EGGLESTON. I don't know.

Mr. CHERTOFF. Since we are talking about matters that you remember, it relates to documents in Vince Foster's office, I'm going to show you a letter of April 6, 1994, signed by you, to the General Accounting Office. You have it in your package. It's 2 pages. It's a cover letter and it's a series of responses to GAO questions for Mrs. Clinton relating to the handling of the Travel Office matter. Is that your signature on the bottom of the cover page?

Mr. EGGLESTON. I'm sorry, Mr. Chertoff, I haven't found it yet.

Mr. CHERTOFF. It's at the end of the Watkins' memo.

Mr. EGGLESTON. I'm sorry, since I was looking, Mr. Chertoff, I didn't listen to your question.

Mr. CHERTOFF. I will give you the question again. Is that your signature on the bottom of the page?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. It says, "Attached please find written responses to the questions that GAO posed to Mrs. Clinton." Is that right?

Mr. EGGLESTON. Correct.

Mr. CHERTOFF. You enclose a sheet of paper that is entitled, "Responses to GAO questions for Mrs. Clinton." Right?

Mr. EGGLESTON. I did.

Mr. CHERTOFF. Now this was a response to questions that were contained on a page which I think is also in your package, right

before what I have just shown you, that was a list of 5 questions that General Accounting Office posed to Mrs. Clinton about the Travel Office firings; is that right?

Mr. EGGLESTON. Correct. I remember doing this.

Mr. CHERTOFF. And the GAO is what?

Mr. EGGLESTON. GAO is the General Accounting Office, which is an arm of Congress.

Mr. CHERTOFF. It's the investigative arm of Congress; correct?

Mr. EGGLESTON. It does audits. It's mostly an auditing agency.

Mr. CHERTOFF. Auditing meaning they review Government operations for mismanagement or impropriety; right?

Mr. EGGLESTON. And lots of other things.

Mr. CHERTOFF. You understood there was an investigation here about the handling of the Travel Office matter and the manner in which employees were discharged; is that correct?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. You knew it was an official investigation?

Mr. EGGLESTON. I knew it was an investigation that the General Accounting Office was conducting.

Mr. CHERTOFF. An official Government agency; correct? It wasn't a press inquiry. It was from an official Government agency?

Mr. EGGLESTON. It was from the General Accounting Office, sure.

Mr. CHERTOFF. You were assigned to handle this with Mrs. Clinton; is that correct?

Mr. EGGLESTON. Get the answers to the questions?

Mr. CHERTOFF. Yes.

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. You sat down with her?

Mr. EGGLESTON. I did.

Mr. CHERTOFF. You showed her the questions?

Mr. EGGLESTON. I did.

Mr. CHERTOFF. She gave you the answers?

Mr. EGGLESTON. She did.

Mr. CHERTOFF. She told you orally what the answers were?

Mr. EGGLESTON. She did.

Mr. CHERTOFF. Did you have a back-and-forth discussion about how to characterize the answers, or how to write them?

Mr. EGGLESTON. At the time——

Mr. CHERTOFF. The first time you met with her on this.

Mr. EGGLESTON. I think at the time that we first met about it, she answered the questions but we didn't talk about the language, how I would answer them.

Mr. CHERTOFF. Well, did you give her the questions in advance?

Mr. EGGLESTON. I don't remember whether I gave them in advance or brought them to the meeting, but we discussed the actual questions that are on the document that you have shown me at the meeting.

Mr. CHERTOFF. She orally gave you answers?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. You wrote them down on a yellow pad or something?

Mr. EGGLESTON. Presumably.

Mr. CHERTOFF. Did you have a back-and-forth with her on that occasion about what the answers were going to be?

Mr. EGGLESTON. We talked about the answers, yes.

Mr. CHERTOFF. Did you discuss how to phrase the answers?

Mr. EGGLESTON. We discussed what the answers would be. I don't know whether at that time we went through the actual words that were going to be put down on the paper, but I asked her questions and got—I asked her these questions and got her answers.

Senator SARBANES. Mr. Chairman, are we going to get into Travelgate?

The CHAIRMAN. No, but I'm going to give Counsel—

Senator SARBANES. Well, I thought Mr. Clinger was doing that tomorrow?

The CHAIRMAN. I will allow Counsel to develop this line for several minutes but we're not getting into that. Go ahead.

Senator SARBANES. What are we doing if we're not getting into Travelgate?

The CHAIRMAN. We are not but I will allow him to pursue this line of questioning. It goes to what Mr. Eggleston does, what he doesn't do, what he remembers and doesn't. We're going to pursue it. Go ahead.

Mr. CHERTOFF. When you sat down with Mrs. Clinton to do this, did you have a general discussion with her about what the GAO is investigating?

Mr. EGGLESTON. I don't specifically remember. I'm sure I told her these are the questions that we've received from the GAO. That's more detail than I remember, but I don't have any recollection that she didn't know that the GAO was doing an investigation into the Travel Office. There had been a fair amount in the newspapers about it.

Mr. CHERTOFF. Was there any other lawyer from the White House Counsel's Office who was advising Mrs. Clinton on how to respond to the questions?

Mr. EGGLESTON. I'm the only one that I know of. If someone else talked to her about the answers I don't know about it.

Mr. CHERTOFF. As far as you know, that was your job, to deal with the issue of her answers to GAO questions; right?

Mr. EGGLESTON. Yes, yeah.

Mr. CHERTOFF. Now, you come in and you explain to her what this investigation is about, Mr. Eggleston?

Mr. EGGLESTON. I'm sorry, Mr. Chertoff?

Mr. CHERTOFF. Did you have any discussion with her about what the investigation was about?

Mr. EGGLESTON. Mr. Chertoff, I don't really remember, but you are talking as if this would be the first time she would have heard of it. This was a matter that had been in the press by April 1994, repeatedly.

Mr. CHERTOFF. It was the first time you were talking to her about it; right?

Mr. EGGLESTON. Correct, but I certainly didn't think I was telling her for the first time that the GAO was doing an investigation into the Travel Office.

Mr. CHERTOFF. When you get your answers on your yellow pad, you write them down, go back and get them typed up?

Mr. EGGLESTON. Well, I typed them.

Mr. CHERTOFF. Yourself?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. Did you submit the typed answers back to her?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. What did she do?

Mr. EGGLESTON. She called me.

Mr. CHERTOFF. And she called you in for a meeting?

Mr. EGGLESTON. No, I think—I think I met with her one time. It's possible I met with her more than once but I remember meeting with her at least once and talking with her once on the phone after she had gotten the message.

Mr. CHERTOFF. After getting the typed-up version she spoke to you on the telephone?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. What did she say?

Mr. EGGLESTON. I think she basically said that the answers were fine and I was authorized to submit them to the General Accounting Office.

Mr. CHERTOFF. Did she make any changes in the answers?

Mr. EGGLESTON. I don't remember that she did.

Mr. CHERTOFF. Are you quite certain—this is an important question, Mr. Eggleston. Are you certain that the answers that you submitted to the White House that are contained—

Mr. EGGLESTON. I'm sorry, submitted to the GAO?

Mr. CHERTOFF. I'm sorry, to the GAO that are contained on the document marked "Responses to GAO questions for Mrs. Clinton," are you certain that those answers which you submitted had been reviewed and approved by Mrs. Clinton?

Mr. EGGLESTON. Yes. I mean, I don't mean to be corny here, unless you haven't shown me the ones—if you got these from the GAO, then these—the ones I submitted to the GAO were approved by Mrs. Clinton.

Mr. CHERTOFF. That was no trick question. That's what I wanted to find out.

Mr. EGGLESTON. You identified it as so important I wanted to be careful in my answer.

The CHAIRMAN. It's no trick question. That's what we got from the GAO.

Mr. CHERTOFF. What you sent in was exactly what she had reviewed and authorized by her to send in as her answers; is that correct?

Mr. EGGLESTON. Yes. I sent these in—I did not—I sent these in after getting approval from her that these were her answers.

The CHAIRMAN. Senator Sarbanes.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you.

Mr. Eggleston, in view of the importance that has been placed on getting the notes of the November 5th meeting and all of the background about these hearings today, I would like to ask you some questions about that meeting, if I may.

At the November 5th meeting, did anyone direct you to attempt to obtain any records or documents from any other Government agency, including the Small Business Administration?

Mr. EGGLESTON. No.

Mr. BEN-VENISTE. The request that was made by Representative LaFalce to the Small Business Administration regarding Capital Management Services was made prior to the November 5th meeting that you have described; is that so?

Mr. EGGLESTON. Mr. Ben-Veniste, I think the first—I don't know that I know when the request was made. I think that the first time that I would have known anything about it was November 6 or later, because—which would be the day after this meeting, because I think that it was reported in The Washington Post on Saturday, November 6 that the request had been made, and I don't think I had any other knowledge of it.

Mr. BEN-VENISTE. You don't know whether you had any knowledge as you sit here now, but do you accept the possibility that since the request by Representative LaFalce was made, according to The Washington Post story of November 6, on November 4, the day before your meeting, that it may have been the subject of a passing commentary at the meeting?

Mr. EGGLESTON. I don't remember that—Mr. Ben-Veniste, I don't remember that the request from Chairman LaFalce was discussed at the meeting. I just don't remember that. By that time in the press there had—Mr. Hale had been indicted in late September, there was a lot of press activity and issues regarding Judge Hale that had been in the press by November 5. I don't actually remember, and maybe Mr. Kennedy does, but I don't remember anybody discussing the LaFalce request at the November 5th meeting.

Mr. BEN-VENISTE. Well, whether or not you recall it, I'm now putting into context the events that occurred prior to this meeting. And of course, we have covered all of this in prior hearings of this Committee to some extent. But the chronology of events is that on November 4, Congressman LaFalce makes the request. You have a meeting on November 5. November 6 there's a news story about it, about the LaFalce request. On the 16th you received documents.

Now putting aside your very precise answers to the questions that were put to you by my colleague, Mr. Chertoff, let's try to just talk in a nonlawyerly way about this for a moment. You anticipated, if I understand your testimony, that there might be a press inquiry that day?

Mr. EGGLESTON. November 16th?

Mr. BEN-VENISTE. Right.

Mr. EGGLESTON. Yes.

Mr. BEN-VENISTE. And therefore you wanted to give Mr. Lindsey some notice that you had received some documents; correct?

Mr. EGGLESTON. Yes, I think I did.

Mr. BEN-VENISTE. Now at some point you had the opportunity to look at those documents. Do you remember when?

Mr. EGGLESTON. Sometime during the day on the 16th.

The CHAIRMAN. Possibly—

Mr. BEN-VENISTE. Possibly after you had left a message for Mr. Lindsey?

Mr. EGGLESTON. Possibly.

Mr. BEN-VENISTE. We covered in a hearing some weeks ago the substance of the material that you had received. It was the subject of testimony from, as I recall, Mr. Spotila, Mr. Foren, and then we read some testimony regarding the Department of Justice take on

these documents. And my recollection is that these documents were in all respects unremarkable; is that correct?

Mr. EGGLESTON. My recollection is that Mr. Spotila and Mr. Teckler, who was the career SBA official, both testified that they were routine, unremarkable background documents and not sensitive.

Mr. BEN-VENISTE. So that all this discussion and questioning in great detail about whether you left a message for Mr. Lindsey and how it could be that you didn't show these documents to him because the message said on it important, and so forth and so on, in the context of what this material turned out to be, was that anything significant in your mind that you didn't show it to Mr. Lindsey, other than the fact that you didn't show it to him?

Mr. EGGLESTON. No.

Mr. BEN-VENISTE. We had testimony from Mr. Spotila and Mr. Foren and Mr. Teckler, I believe, that before the SBA released the documents to Congressman LaFalce, they self-censored them, they went through them to make sure that they were not releasing any documents that were sensitive in any way. Do you recall that?

Mr. EGGLESTON. I do.

Mr. BEN-VENISTE. So both your analysis of the documents when you looked at them, the testimony of all of the Small Business Administration officials who put the package together, and indeed the testimony of the Department of Justice career people who asked you to return them, was that in all respects these documents were not sensitive, they were not remarkable, there were no smoking guns, there was no advantage to be gained by looking at them, and indeed the SBA and Justice Department investigations were in no way affected, much less impeded, by the fact that they had been turned over to you for that period of time; is that correct?

Mr. EGGLESTON. I think that's right. I think if I was going back to see Mr. Lindsey, and particularly given the first note I was shown by Mr. Chertoff, it was probably to confirm to him that there was nothing particularly sensitive or interesting in the documents.

Mr. BEN-VENISTE. And the testimony—

The CHAIRMAN. You were saying there was nothing interesting in those documents?

Mr. LINDSEY. I saw nothing interesting in the documents—

The CHAIRMAN. You went through all of them?

Mr. EGGLESTON. Yes.

The CHAIRMAN. What about Susan McDougal wasn't Master Marketing important?

Mr. EGGLESTON. Mr. Chairman, I don't remember the details of the documents. I remember concluding—

The CHAIRMAN. You know Susan McDougal was a partner, didn't you, of the Clintons?

Mr. EGGLESTON. I knew that Susan McDougal was a partner.

The CHAIRMAN. You weren't concerned whether an illegal loan had been made, facilitated by Mr. Hale? And I'm going to ask the time be put back on my—on the Minority's side. You weren't concerned about that and that issue never came up?

Mr. EGGLESTON. Mr. Chairman, I don't think anything in these documents indicated that Mrs. McDougal had made an illegal loan

facilitated by anyone so these documents—I knew the issue existed but—

The CHAIRMAN. You knew the issue existed?

Mr. EGGLESTON. Of course.

The CHAIRMAN. You were concerned about that?

Mr. EGGLESTON. This was one of the allegations that was in the newspaper by then. But the question I think Mr. Ben-Veniste asked me was whether these documents had any impact on that, and my recollection is they were not, and I think that Mr. Spotila, Mr. Teckler, Mr. Foren, and I think some depositions from Department of Justice people all came to the same conclusion.

The CHAIRMAN. OK.

Mr. BEN-VENISTE. If I may, Mr. Chairman, simply remind the Committee of the testimony of the Department of Justice career people who looked at this. George Allen Carver, who testified on October 17, 1995, at page 80:

Question: Did you ever learn the circumstances under which these documents were transmitted to the White House, and what happened?

Answer: My impression was it was totally innocent. And you had White House staff, who were interested in tracking what was going on on the Hill, for—because it concerned the White House. So, that when a request for documents went over to the Small Business Administration, they wanted a set of that documents and that a set of those documents was prepared.

Then, Irvin Nathan testified, and he was the deputy to Phillip Heymann who was the Deputy Attorney General, at page 97 of his testimony:

Question: Did you ever come across any evidence that might have led you to feel that there was an improper motive in the White House's request for the documents?

Answer: No. Mr. Eggleston's explanation was reasonable and sensible and I accepted it fully and had no reason to doubt it.

Let me go on to the other points regarding the November 5th meeting. At that meeting, did anyone employed by the Government transmit to Mr. Kendall, or anyone not employed by the Government, any information of a confidential nature which had been attained from any Government agency?

Mr. EGGLESTON. Not that I know of.

Mr. BEN-VENISTE. You certainly did not?

Mr. EGGLESTON. I certainly did not.

Mr. BEN-VENISTE. At the time of the November 5th meeting, I believe you had stated that there had been a great deal of information in the press. Can you briefly summarize the nature of that information?

Mr. EGGLESTON. By November 5th, as I recall, the following issues were well in the press. Mr. Hale had been indicted down in Arkansas in late September, and there were a series of articles in the Arkansas papers about that indictment, including some of his allegations.

The Washington area and The New York Times stories began, I think, on October 30th, and there were stories October 30th and then by The New York Times and the AP and The Washington Post and The Washington Times, divulging nearly, as I recall, all the issues reflected in Mr. Kennedy's notes, including issues about campaign contributions, issues about McDougal, the entire issue related to Whitewater and whether or not the amount of the investment and all that was reappearing again, as I recall, and of

course had been the subject of substantial press attention during the campaign in March, April 1992.

My general recollection is that by the 5th, there had been 4 or 5 continuous days of one or two stories in all the major papers, dealing with most of these issues. It was really—in some ways, it was the reason for the meeting.

Mr. BEN-VENISTE. You've already testified that no one requested that anyone prospectively go out and obtain any information for transmittal to Mr. Kendall. Let me ask you, in your understanding, what was the purpose of the meeting?

Mr. EGGLESTON. Mr. Ben-Veniste, by November 5, 1993, what had been made public essentially was that there was a criminal investigation, and that aspects of it touched on the President and the First Lady, not that they were subjects, not that they were targets but that they were somehow involved.

It became important, and I remember talking about this with Mr. Nussbaum, it became important to us that we make sure, we and the White House make sure that we are doing the appropriate role and that there are things that we can't do. And the purpose of this meeting was, and I remember, the purpose of this meeting was to make sure that the President and First Lady had private counsel who would do the kinds of things that private counsel can do in connection with these kinds of matters, and there are lots of things that we as Government officials can't do. And we in the White House would do the things that were appropriate for Government officials to do, who are working at the White House. But my recollection is that the purpose of this meeting was to insure that everybody had on the right hat. Because by November 5th, it was plain that this was going to be a problem that was going to require private counsel by the President and the First Lady.

So that, to me, was the first goal and the first reason to have the meeting. The second then was to bring private counsel up to speed on what the facts were. And the people at the meeting who essentially knew or had some knowledge of what the facts were, were Mr. Lyons who had done some work on the issue during the 1992 campaign, Mr. Lindsey who had known the President for a substantial period of time, and to some extent Mr. Kennedy. At the time, I had some little information about this. I guess I was learning as well.

Mr. BEN-VENISTE. You mentioned a division of labor, and that there were going to have to be different hats worn on a prospective basis in dealing with these issues. With respect to press inquiries, was there a clear demarcation of when it would be that Mr. Kendall would handle a press inquiry and when the White House would handle a press inquiry?

Mr. EGGLESTON. I don't remember that we did a real clear demarcation. I think it was our view that it was perfectly appropriate for White House officials to continue to respond to press inquiries. Because of the nature of the White House, those kinds of questions get thrown at the President at photo ops when he gets off Air Force One and the like and we couldn't essentially or—probably not Air Force One, probably off the helicopter—but that we couldn't have the White House out responding to the issues and there were other issues that Mr. Kendall would be responding to.

I don't remember a real clear demarcation but I do remember believing it was perfectly appropriate for the White House to continue to respond to those questions.

Mr. BEN-VENISTE. Were there other areas where there was no clean and obvious demarcation, on a going forward basis, that the White House would be completely out of it, and Kendall would assume authority and responsibility?

Mr. EGGLESTON. Well, to the extent there were going to be contacts with law enforcement officials, for example, I mean, that would be an area—it was one of the reasons that we needed—not we, the President and the First Lady needed private counsel. That is something that the White House really was just not going to do, and couldn't do things like calling up prosecutors and calling up the Department of Justice and saying what's the status, what's going on, how is this happening?

Those were the kinds of functions that Government officials working in the White House really, I thought, could not perform, so that's an area. Another area was some level of fact development. I thought fact development, we thought some level of fact development was not appropriate for the White House to do for a variety of reasons, not only inappropriateness but if the White House were to start contacting witnesses, we would start reading back in the paper that someone from the White House had called someone in Arkansas to talk to them about various issues. So that was an area probably that Mr. Kendall was going to focus more on, although there was some knowledge about some of these facts within the White House, and obviously we weren't going to close our eyes to the knowledge in the White House. When I say that, I principally mean Mr. Lindsey who had been involved in that issue for quite some time.

Mr. BEN-VENISTE. If I understand your testimony, there were some areas that were more clearly those which would be arrogated to Mr. Kendall and private attorneys, and there were others that were not so clear. And I take it there were some understanding that you would have to continue to communicate with one another, that is the White House lawyers and Mr. Kendall and his team of lawyers, as issues arose on a going forward basis, to make sure that something didn't fall between the cracks, and that a matter was being handled in the most appropriate way possible.

Mr. EGGLESTON. I think that's absolutely accurate. I think we anticipated that that would be sort of a first communication, but that as, over time, there would be the need for additional communications between Counsel's Office and Mr. Kendall, as each are appropriately performing their own function in this matter.

Mr. BEN-VENISTE. Of the people in the room that day, how many had you known previously?

Mr. EGGLESTON. Previous to that day?

Mr. BEN-VENISTE. Yes.

Mr. EGGLESTON. Well, I knew Mr. Kendall because he is a Washington lawyer and I know him from being around. I obviously knew all the White House people prior to that day. I don't believe that I had met Mr. Lyons before. And Mr. Engstrom, I am fairly confident I had not met before.

Mr. BEN-VENISTE. And had you worked with Mr. Kendall on any matter prior to that day, other than generally knowing who he was?

Mr. EGGLESTON. I don't think I had worked on a particular matter with him that I remember right now. I know him from being a Washington lawyer, him being a Washington lawyer, and from his prior employment actually.

Mr. BEN-VENISTE. Now much has been made of the line in the notes, and I am referring to S 12534. If you would have that page in front of you, please.

Mr. EGGLESTON. Is that the typewritten version?

Mr. BEN-VENISTE. Yes, it is. You have that handy?

Mr. EGGLESTON. I do, sir.

Mr. BEN-VENISTE. Where it says, "Vacuum," and then, "Rose Law files." Let me ask you very directly because this is an important question. Was there any discussion about removing, or destroying, or obliterating, or otherwise making unavailable any files that were believed to be in existence at the Rose Law Firm during that meeting?

Mr. EGGLESTON. Absolutely not.

Mr. BEN-VENISTE. Your prior background was as a Federal prosecutor; is that correct?

Mr. EGGLESTON. That's correct.

Mr. BEN-VENISTE. Would you have tolerated any such discussion had such discussion arisen?

Mr. EGGLESTON. I would not have.

Mr. BEN-VENISTE. Did you have any reason to believe at the point in that meeting that there were any files in the Rose Law Firm that were in any way the subject of interest or controversy at that time?

Mr. EGGLESTON. I don't think I had it as to any particular files, no. But I want to emphasize, as clearly as I can, there was absolutely no discussion at that meeting of anybody destroying any files. I would not have tolerated it, Mr. Kendall wouldn't have tolerated it. I had known Mr. Nussbaum for a period of time before that. He would not have tolerated that. That conversation did not occur at this meeting.

Mr. BEN-VENISTE. Mr. Kennedy, let me ask you to look at those notes, and look at your handwritten notes, which are at page S 12523.

Mr. KENNEDY. Yes, sir.

Mr. BEN-VENISTE. I feel confident I am not asking you this question for the first time. What did you mean, to the best of your recollection, when you wrote this note—"Vacuum," space, "Rose Law files"?

Mr. KENNEDY. We were referring to at the meeting that there was an information vacuum, that when you tried to get your arms around Whitewater, in this case referring to the real estate investment, it is impossible to do. The records were a shambles. I had personal knowledge of that. You are dealing with an information vacuum.

The Rose Law files, as they related to Whitewater documents, would—if you had gotten your hands on them, they would not have meant anything to you because of the condition of the records.

Mr. BEN-VENISTE. Let me ask you very directly the same question I asked Mr. Eggleston. Did you or anybody at that meeting suggest in any way, shape or form that files then existing at the Rose Law Firm should be destroyed or hidden or otherwise made unavailable?

Mr. KENNEDY. Absolutely not. And I don't have a prosecutorial background but I wouldn't have tolerated it either.

Mr. BEN-VENISTE. Now let me go on in the notes. At page 12535 of the typed notes—in fact, let me back up because I do want to cover this area about Mr. Foster's suicide. I guess that would be on the first page of the typed notes. I will probably get a thousand more preprinted postcards for asking you the question. But, again, the notation with respect to Mr. Foster on the bottom of page 12529, it says, "July 20th: FBI issued subpoena and took records of municipal judge named Hale." Do you know who imparted that information?

Mr. KENNEDY. It had been in the press.

Mr. BEN-VENISTE. OK. Now it is inaccurate in a couple of ways.

Mr. KENNEDY. That's correct.

Mr. BEN-VENISTE. Do you now know why it is inaccurate?

Mr. KENNEDY. Well, the records that were taken were not of David Hale as a municipal judge but were instead the records of Capital Services Management, which is an SBIC that David Hale owned and operated.

Mr. BEN-VENISTE. Indeed the FBI didn't issue a subpoena, they are not in the business of issuing subpoenas, they applied for a search warrant that day, and obtained a search warrant which was not executed—that means it wasn't served—and the search was not conducted until the next day, the day after Mr. Foster's death.

Mr. KENNEDY. That's correct.

Mr. BEN-VENISTE. So while there was speculation because of the coincidence of these two events, in fact, because Mr. Hale was caught flatfooted by the FBI on the 21st, the presumption is that no one, including Mr. Hale, had any prior knowledge that he was going to be the subject of a search that would occur on the next day, and by that time, of course, Mr. Foster had committed suicide.

So you are reporting here, I take it, on the coincidence between the dates of the Hale search warrant and Mr. Foster's death as being reported in the press?

Mr. KENNEDY. That is correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. And then on the following line, which is perhaps provocative if you don't have all of this in context, is the word "Factor." What did you mean by that?

Mr. KENNEDY. Simply that the coincidence had become a factor in all of the intense speculation surrounding Vince's suicide.

Mr. BEN-VENISTE. Let me ask you about information contained on page S 12535 of the typed notes, where it says, "Could be that JGT is target of RTC referral." Do you see that?

Mr. KENNEDY. Yes, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me direct this question to Mr. Lindsey. If you could take a look at that note. Do you recall how you came to learn that information as of November 5?

Mr. LINDSEY. Yes, sir. I believe in the October 14th meeting that we had with certain people from the Treasury Department, that they indicated that Jeff Gerth had indicated that to them.

Mr. BEN-VENISTE. So that Jeff Gerth, again being the reporter from The New York Times, who according to testimony received by this Committee, had spent the days talking to David Hale, had apparently called Mr. DeVore, was it, at the Treasury Department?

Mr. LINDSEY. Yes, sir, Jack DeVore.

Mr. BEN-VENISTE. And had provided that information to Mr. DeVore. Did you regard that as some confidential or proprietary or sensitive information of the Treasury Department?

Mr. LINDSEY. No, sir, I did not. In fact, a memo I wrote after the October 14th meeting, which this Committee has had and which we have had hearings about, clearly states in the second paragraph, "Gerth," meaning again Jeff Gerth, "stated that to his knowledge President Clinton was not a target of the referrals although Governor Jim Guy Tucker might be."

So clearly, you know, my notes that were written shortly after—my typed notes written shortly after that meeting indicated that that information came from Jeff Gerth of The New York Times, not from any confidential source.

Mr. BEN-VENISTE. I see my red light is on, so we will yield the time back if we have additional time. I think this is a good point to transfer.

The CHAIRMAN. Before I turn to Senator Bond, Mr. Kennedy, let me ask you to look at your notes with the relevant testimony, and have them put up on the Elmo. Your handwritten note about Rose Law files, the "vacuum" page.

Mr. CHERTOFF. 12523.

The CHAIRMAN. Look at that line, starting with "vacuum," would you read that for me, it says, "vacuum," what else? Read it.

Mr. KENNEDY. It says, "Vacuum," space, "Rose Law files, White-water docs," dash, "subpoena."

The CHAIRMAN. What did you mean by that?

Mr. KENNEDY. By what, Mr. Chairman?

The CHAIRMAN. What did you mean by that whole thing?

Mr. KENNEDY. What I just testified about, Mr. Chairman.

The CHAIRMAN. The Whitewater documents were subpoenaed?

Mr. KENNEDY. They were not.

The CHAIRMAN. Were you concerned about the subpoena?

Mr. KENNEDY. We did not anticipate a subpoena, Mr. Chairman. We did not anticipate a subpoena, Mr. Chairman.

The CHAIRMAN. If you did not anticipate a subpoena, why did you put that down?

Mr. KENNEDY. We did not have an expectation that a subpoena would be issued.

The CHAIRMAN. Then the question is, why did you write "White-water documents subpoena"?

Mr. KENNEDY. The discussion was that if a subpoena were issued, files that had once been at the Rose Law Firm would no longer be there, with regard to Whitewater.

The CHAIRMAN. I believe that, absolutely. Let's go over the next one. "Documents, never know go out," underlined. Is that what it says? Read it.

Mr. KENNEDY. Yes, sir. Asterisk, "Documents," with an arrow, "never know go out."

The CHAIRMAN. What did you mean by that?

Mr. KENNEDY. I was talking about how the Whitewater documents, and I am talking about the Whitewater corporate records as they relate to Whitewater as a corporation and with regard to the real estate—

The CHAIRMAN. Aren't you talking about the Rose Law Firm concerning documents?

Mr. KENNEDY. Rose Law Firm policy?

The CHAIRMAN. Wasn't there a policy?

Mr. KENNEDY. What policy, Mr. Chairman?

The CHAIRMAN. A policy that the documents would not go out? Did you hear the testimony of your former partner last week?

Mr. KENNEDY. Not all of it, no, sir.

The CHAIRMAN. You heard the testimony relating to Mr. Foster coming to him and asking him to remove certain documents and to give them to him, the file? Do you remember that?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. This was unusual wasn't it?

Mr. KENNEDY. Well.

The CHAIRMAN. Weren't you the managing partner then?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. You were the managing partner?

Mr. KENNEDY. Mr. Chairman—

The CHAIRMAN. Now wait a minute. I ask the questions.

Mr. KENNEDY. Yes, sir, I understand that.

The CHAIRMAN. Did you have a policy relating to what files and documents could or couldn't be removed from the firm?

Mr. KENNEDY. I don't believe we had a written policy on it at that time, no, sir.

The CHAIRMAN. Did you have a policy?

Mr. KENNEDY. Yes, sir, generally understood, yes.

The CHAIRMAN. What was the policy?

Mr. KENNEDY. Without the client's consent, documents shouldn't be removed from the firm.

The CHAIRMAN. So, doesn't this refer basically to that policy, "Documents," arrow, "never know go out"?

Mr. KENNEDY. Absolutely not, Mr. Chairman.

The CHAIRMAN. What does it mean?

Mr. KENNEDY. It relates to the fact that there is—as far as I know, still is—a mystery about how the Whitewater documents—again I wish to stress these are the corporate records and real estate records relating to Whitewater as an investment—got from the Rose Law Firm to the campaign in 1992.

The CHAIRMAN. You didn't know that your partner, Mr. Foster, had asked for them? You didn't know that?

Mr. KENNEDY. Mr. Chairman, these are apples and oranges. Yes, sir.

The CHAIRMAN. You didn't know that some of these—what about the billing records?

Senator SARBANES. Let him answer.

Mr. KENNEDY. Mr. Chairman—

The CHAIRMAN. Did you ask for the files on Madison?

Mr. KENNEDY. I did not.

The CHAIRMAN. Then how you did you know there were no files?

Mr. KENNEDY. Mr. Chairman, you are confusing apples and oranges. I wish to state again, if you will allow me to answer, that what we are talking about here are the Whitewater records relating to Whitewater as a corporation and the real estate records to Whitewater's actual real estate. These did not relate to Madison files as they were described in Mr. Massey's testimony.

The CHAIRMAN. Did you know that Mr. Foster was looking for the Madison files?

Mr. KENNEDY. I was aware that Mr. Foster was looking for the Madison files during the 1992 campaign, yes, sir.

The CHAIRMAN. Did you know he took them to the campaign?

Mr. KENNEDY. No, sir, I am not aware of that.

The CHAIRMAN. You were surprised when you heard for the first time last week that Mr. Foster took the files to the campaign?

Mr. KENNEDY. Mr. Chairman, I did not hear all of Mr. Massey's testimony. I don't know if he testified about that, about that as a fact or not.

The CHAIRMAN. Did you know about this prior to last week?

Mr. KENNEDY. Know about what, Mr. Chairman?

The CHAIRMAN. That the Madison files were brought to the campaign committee and that Mr. Foster was the person who asked for them?

Mr. KENNEDY. Mr. Chairman, I was aware at the time that Mr. Foster was looking, on behalf of the law firm, at the Madison representation, so that the law firm could make a response to the issues that had come up in the campaign.

The CHAIRMAN. Do you know that the campaign acquired possession of the files?

Mr. KENNEDY. I do not know that for a fact, no, sir.

The CHAIRMAN. You still don't know that for a fact?

Mr. KENNEDY. I still don't know that the campaign actually got the Madison records.

The CHAIRMAN. You weren't aware they were removed?

Mr. KENNEDY. No, sir.

The CHAIRMAN. Let me ask you about the next line. You said, "Documents, never know go out," and then the next line is—

Mr. KENNEDY. Say that again, Mr. Chairman?

The CHAIRMAN. The next line, would you read the next line? There is a word that's underlined twice.

Mr. KENNEDY. Mr. Chairman—

The CHAIRMAN. I am waiting for this one.

Mr. KENNEDY. I bet you are. There is a long answer to this one.

The CHAIRMAN. Creative answer. Go ahead.

Mr. KENNEDY. Characterize it as you wish.

The CHAIRMAN. If it is what has been reported in the media through spokespeople, we will let the general public decide, as well as Members of the Committee.

Mr. KENNEDY. I am totally comfortable with that.

The CHAIRMAN. What is the next word?

Senator SARBANES. Let him respond.

Mr. KENNEDY. When I typed the—what is in front of you is the typed version of these notes. It was done at the request of my coun-

sel, long before any of—either one of us knew that these notes would ever become public. It was done at the request of my counsel. This won't surprise anybody in this room. My handwriting is difficult to read. But it was done on a quick and dirty basis, it was not done with the expectation that I would be answering questions about these notes.

And as anyone who has examined them against the handwritten notes, the actual notes themselves, I dropped some lines, I left some words out. I did not do a perfect job.

One of the things that I have found most aggravating about the press reports and the commentary on these notes is, after the word "quietly" in the typewritten version there is a question mark, put there by me because I wasn't sure at the time whether the word was "quietly" or "quality."

That question mark has never appeared in anybody's commentary or in any press reports—that's something I have to live with—but that question mark is there. And the word is not "quietly," it is "quality." I have taken a magnifying glass, applied it to the originals and that is the word.

Now that ties in with the discussion about the quality of the Whitewater records that I once had in my possession, received from Mrs. Clinton.

The CHAIRMAN. "Vacuum Rose Law files." What does that mean?

Mr. KENNEDY. The words stand not as a complete sentence, Mr. Chairman, or not as even a complete phrase. The word "Vacuum" stands by itself. There is a space between it and "Rose files."

The CHAIRMAN. What does it mean?

Mr. KENNEDY. If you're referring to the handwritten notes.

The CHAIRMAN. What does it mean?

Mr. KENNEDY. As I previously testified, Mr. Chairman, it refers to the fact that surrounding the Whitewater, again the real estate investment, the Whitewater corporation, there was and is an information vacuum.

The CHAIRMAN. How much time did you spend discussing Whitewater during this meeting—no, I will withdraw that. We will get back to that later because we need more time to develop this. I have impinged on my colleague's time, and I will ask that he be given additional time and I will give additional time to this side.

Senator Bond.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

I have some general comments I am going to make, perhaps later on, but what time has been allocated to me now?

The CHAIRMAN. The full 10 minutes and I will give to the other side the additional time. I think we used about 6 or 7 minutes so we will give 16 to 17 minutes to the other side.

Senator BOND. With that, let me go back and begin with some things I wanted to set out first, because a number of things have gone on, Mr. Chairman, there has been controversy around these hearings, and I wanted to clarify a few things before I actually get into the questions.

Now what we have before us are issues surrounding the so-called Kennedy notes requested by the Committee last fall. There was a

claim by the White House of attorney-client privilege. We went to the full Senate to enable the Senate Counsel to go forward with the subpoena. Then, a couple of days afterwards, as a matter of fact, and I think on the Friday before Christmas, the documents were handed out along with annotations to the press. I assume that this action really ends any claim of privilege to the information so released to the press; is that correct?

The CHAIRMAN. That's correct.

Senator BOND. Second, over the past 10 days or so, the White House has discovered two long-lost documents, one the Watkins' memo dealing with the Travel Office firings and what may or may not be the First Lady's role; and the other, the Rose Law Firm billing records which have been under subpoena for 2 years; is that accurate?

The CHAIRMAN. That is correct.

Senator BOND. Third, the sudden discovery of long-lost documents coupled with what they actually say has attracted a good deal of attention from the investigators and the media. And I can tell you from being among the people I represent, they are beginning to ask to know what these documents mean and why they suddenly appear, or reappear.

But the thing that has been troubling to me—I saw in the Associated Press an article last week expressing concern about the possible political impact, the White House and the Democrats are vigorously counterattacking. This is something that we have seen, unfortunately, in this Committee when the White House put out talking points, used by both our colleagues in this Committee and on the other side, to savage Jean Lewis, the RTC investigator.

Now, Mr. Chairman, regrettably it appears that you've become the target this month. Some of the more polite quotes, I gather, they have called you a political assassin and this from a \$500 an hour attorney who represents the President. And the White House itself has called you a classic political henchman. I'm sorry. I strongly disagree with those, but I take it, your critics are unhappy that the public is beginning to ask questions about that.

But I think the climax of all this occurred last Thursday as the Committee attempted to question Mr. Massey of the Rose Law Firm, to get at the bottom of how the Rose Law Firm came to represent Madison Guaranty as a client. In the middle of that testimony, I have seen reported that the Chairman of the Democratic National Committee read a prepared speech in which he called all of this activity the first salvo in the 1996 campaign, continued to lash out at what he called the Majority's recent outlandish allegations and innuendoes.

If this is the road we are going down, there are a few observations I think that need to be made for the record. The Senate has overwhelmingly voted to authorize the funding of this Committee and the scope of the investigation. I believe the vote was 97 to 2 with Senator Simon, a Member of this Committee, voting no, voting for the Resolution, and everybody said we want to get at the truth. In fact, our distinguished Ranking Member reemphasized the need for us to be thorough. He subscribed to the objective of fair, comprehensive, and thorough hearings.

But now as we enter the so-called Arkansas phase of this investigation, in which the actions of the President and the First Lady in their roles as Governor, Rose Law Firm partner and business partner of Jim McDougal in Whitewater are being developed, we are trying to determine what, if any, knowledge or involvement the Clintons' may have had with the various criminal activities, or perhaps liability in—incurring activities, were happening in which they were engaged with David Hale's SBA company, Capital Management Services and its illegal loans, or Jim McDougal's failed S&L, Madison Guaranty and its failed loans.

Now the questions we are trying to pursue are—Did they have any knowledge of these activities? Did the Clintons provide any assistance, either wittingly or unwittingly, in the perpetuation of fraudulent activities? Did they improperly pressure regulators to prop up a failing S&L, either in Washington or in Little Rock? Was there pressure applied to David Hale to make illegal loans to prop up the activities of Mr. McDougal? Were they aware of the illegal contributions made by McDougal to the Clinton gubernatorial campaign? What happened at the Bank of Perry Valley? Was their land deal, Whitewater Development, propped up illegally by diversion of funds from Madison? And were there tax write-offs improperly or illegally taken?

And then the thing that brought the controversy, how the sworn statements and the other public statements square with the facts and with the information that continues to be developed by this Committee.

I don't think anyone disputes that there was criminal activity at Mr. Hale's company, CMS. Then the trials of Mr. McDougal, Mrs. McDougal, and the current Arkansas Governor, Jim Guy Tucker, on conspiracy and fraud charges won't begin for a couple of months, there are other participants in Madison Guaranty who have been convicted.

I think people ought to understand that this Committee has been assigned a serious task by the Senate and has hired serious professionals to assist us in fulfilling the responsibilities. But given some of the comments, it is very disappointing to see that we are going from searching for the truth to not what I would call the first shots of the 1996 campaign, but perhaps by some a defend to the last ditch campaign of attack, and its ABC's are attack the messenger, blur the issues, create delays and diversions.

I think for this Committee to do the job right, we have to match up the written record, the testimony, and the actions of all the parties. Individual questioners should be skeptical of evidence and testimony, and must ask the probing questions that should be asked. As contradictions occur, we have to weigh the records made at the time, and judge the truthfulness of the witnesses, do they have a reason to lie; do they have a greater reason to tell the truth, and then make a judgment.

As time goes on and facts are ascertained, then I think we can draw some initial conclusions. But when memories continually fail at key junctures, and when documents appear after the fact, records are lost and then refound, people tell us they lied to their diaries, they don't recognize their own voice on tape recordings,

don't remember their own notes, it becomes a little bit like a series of my dog ate the homework excuses.

I think that we need to pursue all of these questions, and there have been some very good questions, and I just refer to the questions last August that Senator Kerry asked of Bernie Nussbaum, some very persuasive and very important questions; that is, will they move the—the inquiry along, but last week we saw, instead of questioning, what appeared to be a counterattack, and an attack on you, Mr. Chairman, and I don't think that serves any purpose.

I am troubled that after all of the months and months of testimony, and reviewing the record, where there are some tremendously glaring differences, anytime anybody says there are glaring differences or questions the veracity of the witnesses, the public statements are characterized as outlandish or repugnant or vituperative. I think the time has come when we realize there are some very serious issues here which, if they are not being considered very carefully by the Special Counsel, which I hope they are, need to be aired out and need to be brought in public so that we can find out what, in fact, was going on in the White House.

I didn't ask for the assignment to be on this Committee, I have plenty of other things to do. But I think that we ought to stay on the track without attacking Members of this Committee when they pursue legitimate lines of questions, and demand answers to those questions.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Mr. SIMON. Thank you, Senator Sarbanes, Mr. Chairman.

Just a few comments and then I will yield the balance of my time to Mr. Ben-Veniste.

Number one, when we start asking questions about the Travel Office, that's not within the jurisdiction of this Committee. I am not saying it is not a proper question for some Committee to ask, but that's not part of our responsibility.

Number two, when my friend and colleague, Senator Kit Bond, says that we received information on Jean Lewis from the White House, my belief is—and I would stand to be corrected by either Senator D'Amato or Senator Sarbanes—my belief is that is not accurate, that the information we received on Jean Lewis came as a result of a subpoena from this Committee, not any information that was leaked to us from the White House.

Senator BOND. Mr. Chairman, if I might satisfy my colleague's concern. The Associated Press—

The CHAIRMAN. With the indulgence of my colleague—

Senator BOND. —reported the information—the 4-, 5-page document on how to attack Ms. Jean Lewis was put out by the White House, or ABC.

Senator SARBANES. Not put out to this Committee or to the Members of this Committee.

Senator BOND. It was put out by the White House.

Senator SARBANES. Not to us. The Senator mentioned the House and then he mentioned this Committee and the Members of this Committee, and the latter part of that statement is not correct.

Senator BOND. But what I said was it was used, and it was put out by the White House as identified by ABC. I apologize.

Senator SARBANES. Not used by us. It wasn't part of our effort.

Mr. BEN-VENISTE. Let me clear that up, if I may, Senator—

Senator BOND. I can't jump into your minds. I can tell you that ABC did point out that the attack sheets were put out by the White House.

Mr. BEN-VENISTE. Whatever might have been put out by the White House, let me assure you now publicly, Senator Bond, as I did privately previously when you first raised this, that, as far as the Minority preparation is concerned, I have been doing this kind of work for more than 25 years, and good, bad, or indifferent as my reviews may be, the work was our work, and it was not received from anybody else.

Senator Simon is correct that we had received information which formed the basis for cross-examination of Ms. Lewis on the basis of subpoenas and requests for information. And indeed at the end of the day, Senator D'Amato congratulated the Republican U.S. Attorney, Mr. Banks, for resisting the pressure Ms. Lewis had put on his office to try to initiate some kind of inquiry that would be publicized prior to the 1992 election.

Let me tell you and reassure you, Senator Bond, as I have before, that the work that this Committee has done, on the Minority side, is our work and ours alone.

Senator BOND. Mr. Ben-Veniste, that just leads me to another thing that's been bothering me. Could you provide for the record or advise us precisely what steps you took or were taken at your direction to recover from the tape or the disks, or whatever is used in those machines, by Ms. Lewis, the letter in which she made disparaging comments and which was utilized extensively in cross-examination? How did you manage to get that off of supposedly an erased tape?

Mr. BEN-VENISTE. Well, there is a whole book out now that is called the White House E-mails which is a compendium of all the E-mails that were collected from the Bush Administration and were used in the Iran-Contra and other investigations. And Joseph DiGenova in his report, relating to the Passport Office investigation, similarly reports at some length that E-mail that has been deleted can be recovered if there is nothing that's recorded over it. Similarly—and although people who know me know that it was not me personally who pressed the button that says undelete—that's all it takes to get a message that somebody has deleted.

In this case, we made every effort to refresh the witness's recollection, not to bring out anything in the content of that letter that might be embarrassing to the witness, only the evidence of pre-existing bias.

Senator SIMON. Mr. Chairman, I may need a minute or two extra here.

The CHAIRMAN. Certainly.

Senator SIMON. When Senator Bond and others said memories continue to fail, I completely understand. When Mr. Eggleston says

I can't remember on a meeting 2 years ago, and we go through the same thing on phone calls that people make, 2, 2½ years ago, I think it is understandable. If someone asked me about a meeting 2 years ago, or any Member of this Committee, I think we are frequently not going to be able to remember details of a meeting 2, 2½ years ago.

Then finally, ultimately, we are going to have to make some judgments. I think there are two basic questions: One, has the White House used good judgment in reluctance to disclose certain notes and information? And here, my conclusion is that some good judgment was not used, and that the White House would have been wise to be very candid, very up front, right at the beginning.

Then there is a second fundamental question, and this is one the American people are very much interested in: Has there been illegal or unethical conduct on Whitewater, by either President Clinton or Hillary Clinton? And there, my conclusion on the basis of all these days of testimony and mountains of documents, is there has been, so far as we know, no illegal or unethical activity on the part of the President or Mrs. Clinton.

I yield the balance of my time to Mr. Ben-Veniste.

Senator SARBANES. Mr. Chairman, let me just say that I hope Senator Bond's statement is meant to get the Committee on a course of a fair and thorough and objective inquiry. What has been happening here, as Anthony Lewis pointed out in *The New York Times* over the weekend—I ask that his article be included in the record—is a constant stream of accusations. We are told that the documents are going to show something terrible or a witness coming before the Committee is going to show something terrible, then they come before the Committee, and there is no smoking gun there. It is not borne out by the testimony, and of course that never catches up with the initial assertion.

I made a strong plea the other day that we ought to get the facts first, and judgment later. We have seen a constant process of judgment first. And then when we comment here before the witness table to get the facts, we find that the judgment was not warranted by the facts. The facts don't support the judgment.

We have Mr. Kennedy here today. He has given his view of what his notes meant. It was asserted and widely disseminated that he had said that the Rose Law Firm ought to be vacuumed, in terms of they ought to be cleaned out. Now, he has testified unequivocally here today that that was not the case; is that correct?

Mr. KENNEDY. Absolutely, Mr. Sarbanes.

Senator SARBANES. So his testimony is that the use of the word "vacuum" was to point out there was a vacuum in the Rose Law Firm, that this information was not there and not available.

He wrote the notes and this is his explanation. Now, you know, in any event, a careful inquiry would not have presumed an interpretation and broadly disseminated it. A careful inquiry would have awaited the testimony about what those notes meant, and we have seen repeated examples of that occur. And I think to the extent that it occurs, it undermines the commitment of this Committee to do a fair and balanced and objective inquiry.

Now, you can launch an attack, and of course, that's being done, but on the other hand, it seems to me our basic responsibility to

the American people is to get out the facts and to find out whether there is anything there. And this drumbeat of accusations, which are highly hyped and publicized, then we have this thing where Kendall returned these Madison files, it was then asserted where they had come from Foster's office.

So we went through a period of time where this assertion was constantly being made, carried heavily in the press. It finally turned out they didn't come from Foster's office. They came from the documents that were turned over by Hubbell to Mr. Kendall.

Then you shift off into something else. Now, we are going through this constant process, but it seems to me that if we are going to do our job right, we need to get the facts first and then make the judgments, and not the other way around.

The CHAIRMAN. In fairness to everyone, I believe it is accurate to say, notwithstanding the heavy burdens that may be placed upon the White House, that we have not had the kind of cooperation that this Committee or any Committee of Congress is entitled to. It should not have taken us many months to obtain these diaries, and we should not have needed to go to the Senate Floor to vote for enforcement.

Now the cause of this is the withholding of information, whether intentionally or unintentionally. It is indeed inconsistency of testimony concerning records, recordings, and observations that one should reasonably be expected to recall, given highly-charged situations. You don't attend a meeting on November 5th with the highest level White House officials and was assigned to gather critical information that concerned the participants in the meeting, and then, Mr. Eggleston, fails to recollect what he did with documents, and just tells this Committee that he was happy that he hadn't given them because 2 days later, he learned from the Justice Department that that would have been improper.

You say that they were not concerned about the company which Mr. McDougal's wife controlled and the \$300,000 loan, but obviously, that was a matter of great concern because the notes indicate that they discussed what accusations were made and where that money may have gone. I think, Mr. Eggleston, Counsel has a right to be very—and certainly I am—skeptical about your testimony today.

Given the importance of that event, I don't believe an Associate Counsel to the White House charged with these responsibilities treats this matter lightly. If you hadn't gone over there personally, if you had sent a messenger, I would understand. But you went over personally, and you were tasked with this responsibility obviously. The records indicate that you thought these matters were important, and now you want the Committee to believe that these matters were not of great concern and you just kind of stood there.

So it is the failure to recall, repeatedly, not by one, but by the inner sanctum of the White House that concerns this Committee. It is the failure to produce in a timely manner documents and evidence that may or may not be exculpatory.

Senator BOND. Mr. Chairman, when did we receive this letter, the Bruce Lindsey call list, S 12604?

The CHAIRMAN. Sunday.

Senator BOND. Didn't we request that back in August?

The CHAIRMAN. August 25th. This is what takes place. It dribbles in, and then we are led to believe that it was just found. So, I yield.

Senator SARBANES. Mr. Chairman, I think we just had an example of what I was talking about. You stated that Mr. Eggleston was assigned to gather information at this November 5th meeting. Now, Mr. Eggleston has testified at the table this morning that that was absolutely not the case. I listened carefully and that's what you testified to Mr. Eggleston.

Mr. EGGLESTON. Senator Sarbanes, I was not assigned at that meeting to gather any information and I did not seek the SBA documents as a result of anything that occurred on November 5th.

The CHAIRMAN. Then why did you become involved with that? You just decided to send for these records, based on your own—it wasn't as a result of the meeting where you decided to gather certain information so that you could respond?

Mr. EGGLESTON. It was not as a result of that. And as I testified last time, the reason I did it is that I was asked by Mr. Nussbaum to do it after the article appeared on November 6th.

The CHAIRMAN. Are we going to quibble? The day after you are tasked by Mr. Nussbaum to go and do this; is that correct?

Mr. EGGLESTON. It is not correct.

The CHAIRMAN. It wasn't?

Mr. EGGLESTON. The article appeared the next day, as I testified last time. I was asked later during the week of November 8th by Mr. Nussbaum. What I am quibbling about with you, sir, is your indication that I just took this upon myself.

The CHAIRMAN. No, I didn't say that you took it upon yourself. I think you were assigned this.

Mr. EGGLESTON. I was assigned it during the week of November 8th by Mr. Nussbaum. I was not assigned it at the meeting on November 5th.

The CHAIRMAN. Well——

Mr. EGGLESTON. Nothing in the handwritten notes makes——

The CHAIRMAN. You were assigned a task of gathering that information. Whether that specific assignment came on the 5th or 3 days later or 4 days later from Mr. Nussbaum who was a participant, I think, is a kind of thing that is disingenuous. You were tasked with gathering this information.

Senator SARBANES. Mr. Chairman, in all fairness, given what has been said about the meeting of November 5th, the allegations that have been made about it, it is a very important point that no assignments were made at that meeting, at least according to Mr. Eggleston, to gather information. Now that is contrary to press statements that have been made and allegations that have been waved around. We have to take these things one at a time and tie them down so we don't keep sliding off of them in terms of what happened.

Mr. Eggleston has testified that once this press story appeared, that these matters were going to the House Committee, provided to them by the Small Business Administration, that they were then interested in knowing about it to respond to what they anticipated would be leaks and press inquiries. Obviously, the press has an incredible power. It seems to drive a lot of these things.

What happens is Gerth calls you up and says, this, this, and this happened. Now no one knows whether this, this, and this happened. Gerth is getting these allegations, and then people start scrambling to try to answer the allegations. So the press is always about 10 steps ahead of them. We have no testimony here today that this assignment took place at the meeting and we have allegations leading up to this testimony that that's what happened.

The CHAIRMAN. Let me say—

Senator SARBANES. It's important to identify that, isolate it, and answer it. Then we'll go on and try to answer the next one.

The CHAIRMAN. I'm attempting to find out the truth about what happened at the meeting, what recordings Mr. Kennedy made and then what followed. I think it's difficult for this Committee and this Chairman to believe that everything happened as a result of the direction from that meeting, and that there weren't subsequent meetings and subsequent instructions, maybe with only some of the participants. Indeed, Mr. Eggleston himself says thereafter, Mr. Nussbaum, who was his boss and who was at the meeting, told him to get on top of this and to get these documents. Now, I don't think that is an unfair characterization.

Mr. EGGLESTON. May I respond?

The CHAIRMAN. Yes, you may.

Mr. EGGLESTON. He asked me after the newspaper story reported that they were being given to Congress. It was after the newspaper story said they were being given to Congress that I followed up, and it was that fact that caused me to follow up with the SBA. If that had not happened, I never would have called the SBA because of the reason I talked about earlier, which is that we weren't—people in the White House did not get into that kind of mode.

The question I asked Mr. Spotila, and he testified to it when he was here, was did I ask him whether, since it was given to Congress, would it be appropriate to give them to the White House? Now, that's me, it's Mr. Spotila. I think you have evidence where Mr. Stephens had said that.

That was the trigger. It was nothing to do with the November 5th meeting. You can just say it was, Mr. Chairman, if you like, but it was not.

The CHAIRMAN. Now, I've attempted to characterize this as fairly as possible, giving you the benefit of the fact that you testified that after the meeting on the 6th, the 7th, the 8th, or whenever, you called Mr. Spotila for this information.

It troubles the Senator that the notes indicate the importance of this and that you had documents and that you wanted to get them over there, and yet you can't recall following through on this, and say that the matter just died. And you would lead us to believe that the documents were there and somehow then were returned.

Mr. LINDSEY. Mr. Chairman—

The CHAIRMAN. Now wait, no, no. You are not conducting the investigation.

Mr. LINDSEY. You've accused—

The CHAIRMAN. Mr. Lindsey, I have not addressed with you this matter yet, so you'll have an ample opportunity to make your observations.

Mr. LINDSEY. Thank you, Mr. Chairman.

The CHAIRMAN. I will give you every opportunity to make your observations, but I'm suggesting, given the records—and by the way, we find repeatedly records indicating important conversations, meetings that are set up and then we have no recollection about what took place at the meeting, or whether the scheduled meeting even took place.

In this case, I will say, it said, "drop by at 6 p.m." But we have even had testimony where people have been asked to come to the White House, and where the records indicate, in Susan Thomases' case, that she turned up at the White House, and was on the third floor of the White House, the personal residence of the White House, and guess what? She has no recollection. So it is a pattern surrounding key events, key documents. It is not just an isolated example of memory failure.

That is distressing. So I just suggest to you that there is an element of concern rightfully expressed by this Committee.

I am going to turn to Mr. Chertoff so that we can continue our examination.

Mr. LINDSEY. Mr. Chairman, may I make a comment?

The CHAIRMAN. Yes, you may.

Mr. LINDSEY. You, in effect, I believe, accused Mr. Eggleston and I of lying so—

The CHAIRMAN. I have not in effect. I am saying that the record indicates that there was an—

Mr. LINDSEY. Well—

The CHAIRMAN. The record indicates at least two communications, if not more. It indicates a certain sense of urgency. It indicates that at 11:30 a.m. a request was made or Mr. Eggleston was advised the documents were ready for him—

Mr. LINDSEY. And the conclusion—

The CHAIRMAN. And that—look—

Mr. LINDSEY. Go ahead.

The CHAIRMAN. Yours is not to summarize.

Mr. LINDSEY. Mr. Chairman, I was—well, all right.

The CHAIRMAN. Please do not do it. You have plenty to answer to and we will get to that.

Mr. LINDSEY. Well, but—

The CHAIRMAN. We'll get to you specifically.

Mr. LINDSEY. I'm sorry. You indicated I could respond, and as I started to—

The CHAIRMAN. I will give you an opportunity, but I have not accused you of anything, I am only indicating that this is what the record demonstrates. When Mr. Eggleston says to this Committee that personally going over should not be—I believe it demonstrates the importance to pick up this file, which he described as a foot thick, to bring back this file, to certainly place a call unless your secretary made up the fact that the call was placed, we don't believe that nor have you suggested that, and this would be an accurate reflection of the message left; is that correct?

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. And afterwards, it becomes very difficult to believe that this matter was dropped between the hour of 4:58 and 6 p.m., when he indicated that he would drop by to discuss it. That is the point I am making. I am not challenging your assertion, Mr.

Lindsey. The question is what, if anything, came up within the course of that 1 hour that no longer necessitated this becoming a matter of urgency. And it is difficult to believe those sequence of events, given the records and not the testimony.

Mr. LINDSEY. Mr. Chairman, your point there—

Senator SARBANES. Mr. Chairman, I think that's not fair. I mean, this is the whole point we're trying to make here. Eggleston has testified, Lindsey ought to be given a chance.

The CHAIRMAN. I'm going to give him an opportunity—

Senator SARBANES. A chance to respond.

The CHAIRMAN. What are you saying is not fair, Senator? I am giving him an opportunity. I wanted to outline—

Senator SARBANES. He has been trying to get at it for some time. I think he should go ahead and have it.

The CHAIRMAN. He will not characterize what I have said before I have an opportunity to lay it out here. And I'm going to give him that opportunity. Go ahead.

Mr. LINDSEY. Mr. Chairman, your comment that it's difficult to believe means that you don't believe it, and I'm telling you, I have stated that I do not believe I saw these records. Mr. Eggleston has said he has a clear recollection that he did not share them with me.

Therefore, you now say you're concerned about what happened between 4:58 and 6 p.m. My suggestion was that you were saying at 6 p.m. he did come show me these records. He did not.

The point is you have seen the records, I have not. Why would we want to lie about that? Is there anything in the records that he would have shown me? We've testified to a lot of things. You're suggesting that we would come to this Committee and lie about something that, as far as I know, there is no basis for us to. If he had shown me, I don't think there would have been any problem. The people who have looked at the records have indicated that there is nothing in the records of any concern.

So to suggest that, gratuitously, we would just come up here and tell the Committee something that was false without any sort of basis as to suggesting why we would do that, is unfair, I believe.

The CHAIRMAN. Mr. Lindsey, I don't know why many things have been withheld and why many witnesses have made many statements to this Committee which have demonstrated in many instances, I think, a lack of candor, but that's why we question this. I heard your explanation and I'm now going to ask Mr. Chertoff to examine.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Eggleston, I want to take it step-by-step. You indicated to us earlier in the hearing that you did review the documents that came from the SBA; right?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. And you saw in those documents there were documents relating to David Hale lending money to Susan McDougal, who was a partner in the Whitewater venture; right?

Mr. EGGLESTON. Today—I think so. I think there was one line.

Mr. CHERTOFF. Well, there are documents in there about it so you must have seen it; right?

Mr. EGGLESTON. If there are—I reviewed the documents. If it's in there I probably saw it.

Mr. CHERTOFF. There are documents in there about Castle Water & Sewer so you had to see that.

Now let's go back to November 5. On November 5 you are in a meeting with Mr. Nussbaum, Mr. Lindsey, Mr. Kennedy, and Mr. Kendall, who was to start as the private attorney for the Clintons regarding what are potentially criminal investigations; right?

Mr. EGGLESTON. At the time of the McDougals and possibly Jim Guy Tucker.

Mr. CHERTOFF. Right. So you are in there on November 5, and on November 5 one of the notes—all over the notes are discussions with David Hale, asked for records of Capital Services Management, what David Hale has accused the President of, which is trying to get money over to Jim McDougal by pressuring Hale. There are direct references in the notes to Hale making a \$300,000 loan to Susan McDougal, what Jim McDougal says.

You understand, from your experience as both a prosecutor and a defense attorney, that when you have all these—this information floating around, these allegations, one of the most important things that a defense attorney wants to know is, what is there in the file about David Hale, what is there in the file about what David Hale did with Susan McDougal, what is there in the file about what David Hale did with the money, what is there in the file about what David Hale did with Bill Clinton. And that was the principal topic of conversation you all had on November 5; right?

Mr. EGGLESTON. No.

Mr. CHERTOFF. No? No, it's not all over the records?

Mr. EGGLESTON. Mr. Chertoff, that ultimately wasn't your question. Your question to me was, was that the principal topic of conversation?

Mr. CHERTOFF. Was it one of the principal topics?

Mr. EGGLESTON. It was a topic we had discussed because it had been in the newspaper the last couple of weeks.

Mr. CHERTOFF. Now, you know, from having a lot of experience as a lawyer, one of the things you want to do is verify whether the newspaper stories are true, and what better way is there to do it but than to get records. So now your testimony is within a day or so afterwards, there is a story about SBA records going to Congress; correct?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. And Mr. Nussbaum, who sat in the same meeting with you, where Mr. McDougal's name was mentioned, where the \$300,000 loan was mentioned, where David Hale was mentioned, calls you in and says to you, go find out what happened with these documents, go see if you can get hold of the documents; right?

Mr. EGGLESTON. No.

Mr. CHERTOFF. No, he doesn't tell you to go—

Mr. EGGLESTON. I think I testified to that before. He asked me to follow up on the matter, not to specifically get the documents.

Mr. CHERTOFF. He asked you to follow up on the matter of the SBA files going to Congress, and you understood, because you had had discussions about it a few days earlier, that this was all about David Hale and the accusations Hale had made against the Clintons and the loans that Hale had made; right? Because you talked about it 2 days before.

Mr. EGGLESTON. I understood it from the newspapers as well as the meeting.

Mr. CHERTOFF. But you had a meeting about it, you didn't understand it just from reading the newspapers. You had sat down with a bunch of other lawyers, including lawyers from Williams & Connolly, to discuss these allegations; right?

Mr. EGGLESTON. Sure.

Mr. CHERTOFF. Now when you testified in your deposition here, you were asked questions about what was your state of mind before you got those documents from the SBA. You didn't mention any meeting like this about—in which it had come up, did you?

Mr. EGGLESTON. I have not reviewed my deposition. But I don't think so.

Mr. CHERTOFF. I'll review it for you. On pages 13 and 14, and I think we have given you a copy of your deposition.

Question: Do you recall that at some time you became aware that Mr. Hale was indicted?

Answer: Sure. I have no idea when.

Question: OK. Do you recall whether you had any discussions regarding the indictment with any member of the White House staff?

Answer: I don't recall.

Question: For example, do you recall having any discussions with Mr. Nussbaum?

Answer: I mean, I don't recall. I mean, I am not telling you I didn't, because I think it's highly likely that I did.

But I don't remember any conversations with him about the indictment of Hale.

Question: OK.

Answer: I would not have thought, actually, if you hadn't told me, if you had asked me when I thought Hale got indicted, I would have said sometime in early 1994.

Question: OK.

Answer: So, so I am just, that is the state of my recollection of this whole thing.

Question: OK. Do you recall becoming aware that Mr. Hale was making allegations involving President Clinton and Jim Guy Tucker?

Answer: Yes, I remember that from the press.

Question: Do you recall having any discussions with any members of the White House staff regarding those allegations?

Answer: Not specifically.

Then you go on to say later, at pages 19 and 20:

Answer: I mean, I can't tell you when I was assigned, because I don't know that I can tell you that I was ever formally assigned to do it.

And this was a matter that, until Christmas of 1993, was very episodic. I mean, it was hardly in the press until Christmas of 1993. Right before Christmas of 1993 it began to be a substantial press issue and then remained a substantial press issue until I left. So, so, I mean, this is my recollection.

So I really was minimally involved until around Christmas. And then I became more involved around Christmas.

What we know now, Mr. Eggleston, is that on November 5, you sat with a bunch of lawyers, including criminal defense lawyers, and discussed the allegations; right?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. When you called Spotila up to say is there anything wrong with me getting the documents, did you say, you know, John, I have actually been involved in joint defense meetings with the criminal defense lawyers about this subject?

Mr. EGGLESTON. No.

Mr. CHERTOFF. You didn't mention that to him?

Mr. EGGLESTON. No.

Mr. CHERTOFF. Did you mention it to the Department of Justice in December when the Department of Justice came in to interview you about the reason that you had gone to get the documents?

Mr. EGGLESTON. Not that I recall.

Mr. CHERTOFF. So when the Department of Justice, as Mr. Ben-Veniste read, said that they determined that this was innocent and the motives were innocent, they didn't know about the November 5th meeting, did they?

Mr. EGGLESTON. They did not know about the November 5th meeting from me.

Mr. CHERTOFF. You didn't tell them about it?

Mr. EGGLESTON. They did not know about it from me.

Mr. CHERTOFF. You didn't mention in the deposition here that you had been actively involved in discussions about the Hale matter as early as November 5th; correct? Because I just read you the deposition.

Mr. EGGLESTON. Correct.

Mr. CHERTOFF. Now, I understand that on November 5 you didn't know that there were documents on the way to Congress, but within a few days you find out about those documents; right?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. Mr. Nussbaum says follow up; right?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. And you do follow up?

Mr. EGGLESTON. I did.

Mr. CHERTOFF. You call Mr. Spotila and he sends you a fax?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. And that afternoon you go over and you actually pick up the documents?

Mr. EGGLESTON. Right.

Mr. CHERTOFF. You have two communications, two efforts to communicate with Mr. Lindsey on that day about these documents having to do with David Hale and Capital Management; right?

Mr. EGGLESTON. Yes, that appears to be true.

Mr. CHERTOFF. Right. There's an earlier message you leave before you go to get the attachments; right?

Mr. EGGLESTON. That appears to be true from the records.

Mr. CHERTOFF. You have no reason to deny or dispute it?

Mr. EGGLESTON. I have not denied or disputed it.

Mr. CHERTOFF. You go and get the records. And when you come back, you reach out for Mr. Lindsey again; right?

Mr. EGGLESTON. That would appear to be true from the records.

Mr. CHERTOFF. In your mind, you knew when you got these documents that Mr. Lindsey was the same Mr. Lindsey who had sat in the meeting with you where you were all trying to figure out what was going on with Capital Management and what was going on with David Hale? You knew he had the same state of mind you did because you had both sat in this joint criminal defense meeting together; correct?

Mr. EGGLESTON. We had definitely both sat in the same meeting together.

Mr. CHERTOFF. Together with the attorneys retained by the Clintons to handle privately the issue of a criminal investigation; is that correct?

Mr. EGGLESTON. Yes, yes.

Mr. CHERTOFF. Then you indicate in the message that it's important to go over the Whitewater documents; right?

Mr. EGGLESTON. That's what the record reflects.

Mr. CHERTOFF. You understood from your meeting on November 5 that there was a relationship between the Capital Management investigation and Whitewater because some of the money from Capital Management wound up in Whitewater; right?

Mr. EGGLESTON. I don't remember that today.

Mr. CHERTOFF. It was discussed—

Mr. EGGLESTON. If it's in the notes, I'm not disputing it. I don't remember that today.

Mr. CHERTOFF. So you won't dispute the fact that the notes indicate that there was a \$300,000 loan to Susan McDougal and that Jim McDougal says it was to purchase land in Pulaski County from International Paper and then it went 2 months later from Whitewater Development to Great Southern Land Development Company? It's on page S 12532, it was in the notes.

Mr. EGGLESTON. I could look. It sounded like you were reading from the notes. I don't dispute that the notes are accurate.

Mr. CHERTOFF. Now, we talk about memory. You testified earlier when we were questioning you that because shortly after you got the documents, there was an issue raised where there was a problem—the Department of Justice wanted the documents back. You said this actually was a pretty vivid memory in your mind; right?

Mr. EGGLESTON. That I had not shown the documents to Mr. Lindsey.

Mr. CHERTOFF. Because the whole episode created a problem in terms of the Department of Justice within a matter of days after you got the document; right?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. Then the FBI came in and they questioned you in December?

Mr. EGGLESTON. Correct.

Mr. CHERTOFF. That's not a happy experience for anybody; right?

Mr. EGGLESTON. It's become quite common for people working in the White House, actually.

Mr. CHERTOFF. I'm sure it has. And that tends further to make this incident, which as of November and December of 1993 was—all this had happened within 2 months. At that point it's frozen in your mind as an important event; right?

Mr. EGGLESTON. Well, that it was a problem—I mean, I don't know exactly what you're asking me to say. Yes, I mean, I remember this was a problem. I had created a problem and I was sorry that I created a problem, and I remember it as a result of that.

Mr. CHERTOFF. And it became a memorable event; right?

Mr. EGGLESTON. Parts of it became a memorable event, yeah. I am not telling you that every little thing that I did—I do not today—and you can criticize me if you want to for not remembering this—I do not remember leaving Mr. Lindsey's secretary a note—a message to give to him. I don't remember it, and I don't think I remembered it then. And I just don't remember that.

Mr. CHERTOFF. This is where we are. The problem is when you testified last time and when you talked to the FBI, your position

was because of press inquiries, Mr. Nussbaum told you to follow up on this, you get the documents, you kind of look through them, you are not really that interested once you see that the Clintons aren't there and you put it in a box and put it aside until the Department of Justice comes back to you.

In your testimony in your deposition, which I have read to you, you indicate that really, until Christmas, you're not really involved, you kind of have a knowledge from press stories about this stuff with Hale, but that the documents don't mean anything to you.

But when you look at the notes, what you see is that again and again the people in the conversation on November 5, which include you and Mr. Lindsey and Mr. Nussbaum, who were the people who a week later are talking about getting the documents from the SBA, you see again and again questions come up with this whole issue with Hale and where did the money go and what is Hale saying. And you know from your experience that when these things come up in a joint defense meeting, what you want more than anything else is to find out what is in the Government's files.

So you then go out within 2 weeks at Mr. Nussbaum's direction to follow up, you get the files, you pick them up yourself, you leave a message for Mr. Lindsey telling him that it's important, and then you turn it back to the Department of Justice because they raised a hue and cry about it.

When you look at all of these things together, you understand it suggests a much greater degree of purposefulness and seriousness than is suggested by just the notion that it's a routine response to press inquiries.

My final question to you is this, because we have heard this again and again, the Department of Justice didn't raise an issue about that, they said this was innocent, Mr. Spotila said there was no problem with it. The fact is you did not tell Mr. Spotila or the SBA, and you did not tell the FBI that when you had ordered these documents, you had within 2 weeks earlier, sat at a joint defense meeting with private attorneys representing the President with respect to a criminal investigation to discuss matters of concern for those private attorneys, including those attorneys interested in trying to find out what's going on in the investigations, you did not tell that to the FBI or to Mr. Spotila, did you?

Mr. EGGLESTON. I did not.

Mr. CHERTOFF. Nothing further.

Mr. EGGLESTON. Can I comment?

Mr. CHERTOFF. Sure.

Mr. EGGLESTON. Not only did I not tell him, I also didn't give them the documents, show any of the documents or anything about the documents to the private attorneys. I was not getting this—I told you the purpose of this November 5th meeting was to make sure everybody was wearing the right hat, and we could do the things that we could do and the private lawyers could do the things that they could do.

Mr. CHERTOFF. But you read—

Mr. EGGLESTON. I don't mean to—I listened to you for a long time and let me just give my response.

This was something that I thought that we in our public capacity could do. It was not something that I thought that I was going to

share with Mr. Kendall, and I did not share it with Mr. Kendall. So you've come to a big conclusion, but the conclusion isn't there. I did not share this material—let me just finish.

I mean, the purpose of this meeting, as I understood and described it earlier, was to make sure that everybody was acting in their own appropriate sphere. And when the meeting was over, Mr. Kendall had his activities that he could follow up and there were things that we could follow up, and following up on press inquiries was one of the things that I thought that we should do.

I did not show these documents to Mr. Kendall. I did not get these documents as part of a joint defense arrangement. When I got them, I did not show them to Mr. Kendall. I have to emphasize, I think it would have been perfectly appropriate for me to show these documents to Mr. Lindsey. It looks like I tried to show these documents to Mr. Lindsey.

There is a major distinction here. When I went to get the documents, I didn't know what they were, I didn't know what they said, I didn't have any idea what was in the documents.

Mr. CHERTOFF. But you knew what the subject matter was, that it had to do with the subject matter that had come up in the joint defense meeting within 2 weeks before; right?

Mr. EGGLESTON. Well, I knew that it dealt generally with the subject matter of David Hale.

Mr. CHERTOFF. And you went over yourself to pick it up; right?

Mr. EGGLESTON. I went over myself to pick it up. I didn't know at the time what was in the documents.

Mr. CHERTOFF. You could never know. You reviewed it; right?

Mr. EGGLESTON. Could I give my answer and then you can ask me whatever questions you want?

When I went to get them, I didn't know what was in the documents. You are focusing a lot of attention on this joint defense meeting. The fact is, particularly by the time of November 16, there was much more in the press. I mean, what we basically talked about in this joint defense meeting were the allegations that had come out of the press. This isn't some independent source of knowledge that was going on. And there was even more activity through the press by November 16.

Mr. CHERTOFF. You didn't—

Mr. EGGLESTON. I'm sorry. I know I'm giving a long answer but—so that when I was giving—when I was seeking to get them, I was doing it under, in my capacity as Associate Counsel at the White House, I believed it was proper. And I think there would have been nothing wrong with me showing them to Mr. Lindsey, and as I say, indeed it looks like I probably tried to, which would have been perfectly appropriate, I believe.

I think he wasn't there, I think something happened where I didn't get him, I don't know, I don't remember why he wasn't there but I think something happened that precluded me from showing them to him. And it turned out that, after I had reviewed the documents, they weren't very important, they were not very significant.

Mr. CHERTOFF. But—

Senator MURRAY. Mr. Chairman, may I ask a procedural question? I have been waiting for my 10 minutes time and the school

has asked that we pick up their kids so they don't walk home, and if I don't do it in the next few minutes here—

The CHAIRMAN. I'm going to ask Counsel to hold it down. He has one more question and we'll go right to the Senator.

Mr. CHERTOFF. But Mr. Eggleston, you didn't, after November 5, create separate spheres in which Mr. Kendall was going to be working on his own matters and you were going to be working on your own, because within 5 days thereafter, Mr. Kendall sent you a copy of a chronology he had prepared as part of his representation to the private client, which was found in your files, so there was a continued exchange of information.

You didn't take yourself out, am I not correct, you didn't then say after November 5, look, I'm going to separate myself from Kendall, I'm going to make sure that none of the information I get as a Government official is going to get over to Kendall because I'm going to create an ethical wall between us. You continued to deal with Kendall, you continued to have conversations with Kendall. Kendall gave you a chronology which more or less told you some of the things he was interested in, because it' laid out in the chronology which is dated November 10, you got the chronology; right?

Mr. EGGLESTON. I must have. I heard it was found in my files.

Mr. CHERTOFF. Doesn't the chronology talk about Hale and what Hale claims and the \$300,000 loan, so even after November 5, there wasn't a parting of the ways or passing of the torch? What happened is everybody lit the same torch and went on carrying it; isn't that right?

Senator SARBANES. Mr. Chairman, this is not fair to Senator Murray, I have to say. Mr. Chertoff is spinning out all these theories. He's entitled to do that. Mr. Eggleston is entitled to reply to them because Mr. Chertoff is making an incredible number of assumptions. I think we should go to Senator Murray and let her have her time, and then Mr. Eggleston ought to get an opportunity to respond to this litany that Mr. Chertoff has been setting out.

The CHAIRMAN. Let me say in fairness—could I see that? Could I see that chronology? I don't know how long—

Senator SARBANES. We can come back to that. Why don't we let Senator Murray have her turn.

The CHAIRMAN. We will. I don't know how long we've had this chronology but I think it speaks much about what Mr. Eggleston has testified to, and we will examine that.

And one of the reasons we went over, and I know that my colleague understands that, and because both Mr. Lindsey and Mr. Eggleston want to have opportunities to expand upon, as they should, some of the answers and some observations that the Committee has made, so let's turn—and I apologize to the Senator for the delay, and I thank her for her patience.

Senator Murray.

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

And I do have a few questions for the witnesses. I do want Mr. Eggleston to respond but I did want to come today and make a statement and a few comments, first of all, to express my optimism, Mr. Chairman, that you will be able to work with our Rank-

ing Member in order to complete this Committee's work in a fair and expeditious manner by next month's deadline.

Mr. Chairman, in general I feel that this Committee in the past has been very successful in working on a bipartisan basis in order to find answers to many questions that, quite frankly, have troubled all of us. I do think, however, it is timely to remind this Committee not to lose sight of its mission.

The American people understand the role of this Committee. They want us to ask tough questions and they want us to pursue this investigation in a responsible manner. And if there is any wrongdoing, they certainly want to know the facts and they want us to make recommendations once we have exposed them.

I agree with Senator Sarbanes that it should be facts first and judgment later, but Mr. Chairman, I think we should notice that many people are growing very tired of what they have seen lately, and unfortunately our constituents have watched this Committee become much more political and partisan since we first debated whether to subpoena Mr. Kennedy's notes.

Mr. Chairman, the Government was recently shut down for 21 days, the longest period of gridlock that's ever been imposed by politicians, and I feel it's important to raise that shutdown, even though the only thing it shares in common with this investigation is that they both come from Capitol Hill.

I spent a lot of time during the shutdown in my home State talking to my friends and my neighbors about their concerns, which mostly focused on the future of Medicare and Medicaid, and they wanted to know whether or not we were going to have a budget deal. Those were the issues they cared about. In fact, the Speaker of the House was in my State last week and he cast doubt on the likelihood of a budget compromise and that concerns me a great deal. As a Member of the Budget Committee, I know we have come a long way. I know a budget deal is possible and I am surprised that the Speaker was so willing to throw in the towel this late in the game. A budget deal is within reach and if we can reach a sensible one, we'll be doing something important for this country.

Against that very troubling backdrop, over the last few weeks in my State, was the ever souring tenor of this Committee's efforts, a tenor I believe is the cause for increasing concern. I'm concerned because it appears this Committee may be getting too far ahead of itself without the benefit of, at least for now, all the facts.

For the average person sitting at home watching the evening news, they could easily conclude by watching this Committee over the past few weeks that grievous crimes have been committed, facts and proof discovered, and punishment rendered. All of this could be derived from the sensational claims and statements made to the press.

I think it is very important to point out to everyone that this investigation is not yet over. It has been long for sure, and some think too long and too costly. We have put to rest Vince Foster's suicide, and we have completed the Washington phase of this investigation, but in the present phase, we have answered few, if any, questions.

It is time for us to move beyond the sound bites, Mr. Chairman, and ask the hard questions. I very much fear that partisanship will

intrude into these hearings, especially as Presidential politics heat up, and I can tell you that the people in Washington State are already skeptical of these hearings.

This Committee cannot afford to lose the confidence of the American people, especially when they think their leaders are incapable of keeping the Government running, balancing the budget, and taking care of the issues people really care about.

Mr. Chairman, I urge this Committee to stay focused. We have done nearly 3 dozen days of hearings. We have deposed over 150 individuals, and we've heard testimony from more than 80 individuals, and that's commendable. We have worked hard and resolved many issues.

This Committee is entrusted to investigate some serious issues surrounding Madison Guaranty and Whitewater, and we should do so. If we stay true to that mission, I am confident this Committee can restore its bipartisan demeanor and complete its work on time. And I'm very hopeful that that will be the case.

Having said that, Mr. Chairman, I have one question I want to ask Mr. Kennedy and then we'll turn it over to Counsel.

Mr. Kennedy, on the top of your notes, both typewritten and handwritten, you have a note that reads, "Try to find out what's going on in investigation." Do you have that in front of you?

Mr. KENNEDY. Yes, I do, Senator.

Senator MURRAY. That line could potentially be perceived as very troubling if it meant that the White House staff was going to attempt to acquire confidential Government materials. Can you explain to this Committee for our information what you meant in writing that?

Mr. KENNEDY. Senator, the word is actually "investigations." That's one of the mistakes I made when I typed the notes up. This was a task list that Kendall sort of outlined for himself at the start of the meeting. It's the things that he needed to do or the things that he foresaw that his law firm would be needing to do as he began to represent the President and the First Lady.

Senator MURRAY. Are you aware of any efforts to track down information as it relates to any relevant Government investigations?

Mr. KENNEDY. I am not, Senator.

Senator MURRAY. Thank you. I'll turn it back over to Counsel.

Mr. BEN-VENISTE. Mr. Eggleston, as of early November, isn't it the case that Mr. Lindsey is the person who had been designated to answer press inquiries relating to Arkansas issues at the White House?

Mr. EGGLESTON. Yes.

Mr. BEN-VENISTE. When you learned that Congressman LaFalce had requested documents from the Small Business Administration for this Committee and that was published in the newspaper, Mr. Nussbaum suggested that you ought to see or follow up on that.

If I understand your testimony, you contacted officials at the SBA to see whether it would be appropriate for them to share with the White House what they had given to Representative LaFalce; is that correct?

Mr. EGGLESTON. That is correct.

Mr. BEN-VENISTE. Having given the materials to Representative LaFalce, the understanding, as we have heard in testimony before

this Committee by the officials of the Small Business Administration, was that at some point those documents might well become public. Did you understand that?

Mr. EGGLESTON. Yes.

Mr. BEN-VENISTE. Was it, in your view, a reasonable and legitimate interest of the White House prior to getting press inquiries or prior to the publication of any of these documents, for the White House to also have a look at them if it was deemed appropriate?

Mr. EGGLESTON. Yes, that is the reason I made the call.

Mr. BEN-VENISTE. In calling Mr. Lindsey to let him know that you were in the process of obtaining and had obtained information from the Small Business Administration, were you following up on this matter with the person who you understood had been designated the chief press spokesman or liaison on such matters?

Mr. EGGLESTON. I think that must be true. I always hate to say, "I don't remember" in this forum because it always comes back at you with 10 times more force. I don't actually remember contacting Mr. Lindsey. I have a recollection of not talking to him about this, but the records sure indicate that I talked to him—not that I talked to him, that I talked to his secretary, and if I did, it's because, if the call was going to come in about these records, that call would no doubt come in to Mr. Lindsey.

Mr. BEN-VENISTE. So that the implication that has been ascribed, that there was some surreptitious and clandestine decision struck at this meeting that sent you out as an operative of Mr. Kendall to obtain sensitive information from Government agencies, is, according to the facts that you have testified to here under oath, not a reasonable or accurate description of the true events?

Mr. EGGLESTON. That's correct.

Mr. BEN-VENISTE. It is not a quibble on your part that the motivation and direction to get the material was entirely appropriate from the standpoint of the White House being able to respond to press inquiries?

Mr. EGGLESTON. That's correct.

Mr. BEN-VENISTE. On November 28, 1995—I believe you alluded to this in your earlier testimony—Mr. Teckler, an official of the Small Business Administration, testified before this Committee. At page 145 he responded to this question that I put to him:

Question: Having had the opportunity to review the report and the attachments thereto that were turned over to Mr. Eggleston and with the benefit of hindsight, do you identify any documents that were particularly sensitive?

Answer: No, I think we satisfied ourselves, and I think Mr. Spotila satisfied himself, prior to having sent the documents forward that there were no sensitive documents. We certainly are satisfied to that effect afterwards.

By me, "Is that correct, Mr. Spotila?" Mr. Spotila responded, "Yes, it is."

So that on the basis of your testimony, the documents which were requested were requested for a legitimate purpose at the White House, that you reviewed them, that the documents were unremarkable, that you did not for whatever reason show them to Mr. Lindsey although you felt it would be appropriate to do so, that the Small Business Administration and the Justice Department have said that the documents did not comprise any sensitive or remarkable information, and that having seen the documents, there

was nothing impermissible about that and it did not impede the investigation.

Let me ask Mr. Lindsey one question with respect to the production of this telephone message that Senator Bond asked you about. Can you please describe the circumstances under which that telephone message was not delivered to the Committee prior to the time it was delivered 10 days ago or so?

Mr. LINDSEY. Yes, sir. I'm not sure what this Committee sent to the White House in terms of a subpoena or request. I received from the White House Counsel's Office I believe three separate requests, as they were discussing with you all the scope of the subpoena.

The first request I got, if I remember right, listed about 50 people on it, and asked for any communications or any documents reflecting communications I had with those individuals.

The second document I believe I got, or the second memorandum, had additional individuals that were—it was a smaller group of people that were being asked but I was being asked by some additional individuals.

I got a third request that asked for, and I am paraphrasing, memorandum, documents, dated or prepared before March 4, 1994, relating to, and then it said Whitewater, Madison, Rose Law Firm, and entities.

I understood at the time, or my understanding at the time was that since I had already gotten a request asking for communications with a whole series of people, that those were not asking for communications, they were asking for substantive documents relating to those subjects. I had already provided responses to over, I bet, 60 people.

In my deposition an issue came up about other documents, and I made some comment to my attorney—well, I'm not going to tell you what I said to my attorney, but anyway, I made some comment that I was concerned that we had not provided something that I remembered. We went back to the White House, had additional conversations with the White House Counsel's Office in which they indicated that their understanding of that last request would include telephone messages, even though they had already specifically asked me for telephone conversations with at least 50 people.

We then went back and found some additional documents that related to telephone—they simply reflect a telephone—or a communication, not a meeting and what I would not consider to be a document relating to—I would not consider that to be a document relating to Whitewater. The Counsel's Office took the position that we at least should turn it over because it might be—this Committee might consider it to be a document relating to Whitewater and we made that additional response.

Mr. BEN-VENISTE. All right. So if I understand it, something that came up at the deposition led you to believe that perhaps this Committee was not in possession of a document that you remembered having seen, you went back and you checked, and although technically it might not have been called for, you made the determination to produce it.

Mr. LINDSEY. It wasn't even this document. It was an unrelated document that triggered it in my mind, but it triggered us going back and looking at the request again, trying to determine whether

any of the request would include this type of document. Again, the Counsel's Office making a decision that, to err on the side of disclosure, that we would turn these additional documents over.

Mr. BEN-VENISTE. Let me ask one final question so that we put in context, lest there be speculation about whether you were not forthcoming or hiding the document from investigators, and so forth and so on. Had this particular phone record been produced to any other investigators?

Mr. LINDSEY. I understand that yes, I believe it has been produced to the House Committee in response to a request, and that's the only one I can be sure of.

Mr. BEN-VENISTE. So clearly on the House side, they have already had this document and presumably for some period of time?

Mr. LINDSEY. Yes. A lot of the requests asked for telephone logs, and—you know, and again the Senate requests, or at least what I saw, didn't ask for telephone logs, it—one request asked for communications with a whole series of people which I would—I took to include telephone logs. But when it asked for simply documents relating to these matters, I took that to be substantive documents, not telephone logs. If that was my error, I apologize.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

I have some specific questions I want to get to with respect to some of the notes on the typewritten information that we have, but I do want to follow up on a couple of just kind of general areas. It would be my conclusion in looking at this—at least my understanding of the development of these notes, there was a meeting that took place, someone was charged with keeping information with respect to the points that were raised. And my own conclusion, frankly—and this is not judgmental, it's just a point that I would have thought would have been very natural—that once that document had been put together, that people in fact would be engaged in trying to flesh out some of the data with respect to the areas that were raised.

I gather from listening to the conversation this morning, that the attorneys in the crowd have indicated, well, some of that would be alright but some of that wouldn't. There was kind of a passing of the torch, saying now the Clintons' personal attorneys are going to take care of these things, but I think, Mr. Eggleston, you made reference to the fact that but there would be knowledge in the White House, and I think you pretty much indicated Mr. Lindsey would probably be the person who had most of that knowledge, you wouldn't ignore that.

So what I'm trying to get at here is, there are a lot of different points that were raised. I would assume that Mr. Lindsey and maybe some others were involved in developing some of the background information about some of these points. Is that a fair thing for me to conclude?

Mr. EGGLESTON. I think there may have been issues that he learned about—you can probably tell from the documents that Mr. Lindsey learned a lot about a lot of these issues from listening to

the press calling him and telling him what a lot of the facts were. But the point I was making is that the White House attorneys and other people were not going to be calling third-party witnesses.

Senator MACK. Internally, then, but you all would have been involved in gathering together what information you might have known about these various points. Is that——

Mr. EGGLESTON. I don't think we did that in any sort of systematic way. I think we did it as——

Senator MACK. Again, I'm not trying to pin you down, was there, now that we concluded this meeting, did we give assignments to each of these points to everybody and it was worked through in a thorough way, but from time to time, over a period of time, various issues would come up relative to the points that were made on here and there were going to be certain people in the White House that would have been pursuing gathering of that information. Is that a reasonable conclusion?

Mr. EGGLESTON. If I could just answer that this way, this would come up usually when a press inquiry would come in. Somebody would call up and say how about such-and-such. They usually called Mr. Lindsey, and if he knew the information he might provide the information. There was no effort to go out—now, maybe others did it—but there was no effort that I know of to go out and sort of collect what the existing state of facts or knowledge was about. It was press response driven, as far as I know.

Senator MACK. And in these—I gather there were——

Mr. EGGLESTON. By the White House, I should say. I presume Mr. Kendall was probably doing what ordinary counsel did. But by the White House, it was press response driven, as far as I know.

Senator MACK. Then let me go to some specifics and maybe it might help me both understand how it worked, and also at the same time provide me some information with respect to some of the specifics in the notes.

Mr. Lindsey, if I could, let me engage you in this discussion, and I'm going to be referring to notes on page 12529, and I think that's the first page of the typewritten notes.

Mr. LINDSEY. Of the typewritten version, yes, sir.

Senator MACK. Yes. I want to go to the part that refers to HRC's representation of Madison, the Beverly Bassett part, and possibly even the "RLF—answered questions, did reconstruction."

I guess maybe I should start by asking this question. Are you familiar with what that was representing?

Mr. LINDSEY. Yes, in general.

Senator MACK. Could you tell me what were the points that were raised in that area of discussion?

Mr. LINDSEY. Yes, sir. One of the issues that came up in the 1992 campaign, frankly by Jerry Brown at a debate in Chicago, was that Mrs. Clinton was doing business with the State. In fact, I think he went so far as to say that her husband—that Mrs. Clinton's husband, the Governor, was getting business for her from the State. In connection with that, the issue of Madison's requests to the State Securities Commissioner, Beverly Bassett, now Beverly Bassett Schaffer, came up. We responded to these requests.

It turns out that the Rose Law Firm, on behalf of Madison, made a request, as I think Mr. Massey has testified to, to the State Secu-

rities Commissioner, to clarify whether or not, under Arkansas law, a savings and loan could issue preferred stock. The answer to that question was yes, they could.

Frankly, you know, there's a lot of question about whether or not the Rose Law Firm got preferred treatment. I have never seen anyone suggest any other interpretation of Arkansas law with respect to that issue.

In that letter, as you know, there's a reference at the bottom—it was signed by the Rose Law Firm but there was a reference to if you have questions, call either Hillary Clinton or Rick Massey.

Senator MACK. Would you hold your thought there for just a minute?

Mr. LINDSEY. Sure, absolutely.

Senator MACK. Mr. Kennedy, you were the managing partner of the firm at different—I had a question related to a policy.

Excuse me, just a minute.

The other day in Mr. Massey's testimony, I thought he made reference to, or I picked it up in some other document, as to why Hillary Clinton's name appeared in that letter. I thought I heard him say something about it was a policy of the firm to have the billing partner's name appear on that type of correspondence. Do you know whether that was, in fact, the policy of the firm?

Mr. KENNEDY. I wouldn't say it was a formal written policy but particularly for people situated where Rick was, sort of getting started and whatnot, they were expected to keep their supervisors, the billing partners, informed. And I think that that's what he was referring to primarily.

Senator MACK. Well, the way that it came across was that it was policy to have the billing partner's name appear to be in essence recognizable. It seemed to me, struck me as being much more than just informational, but again really, as far as you're concerned, there wasn't any written policy but it was kind of expected for associates to put the billing partner's—would the name, by the way, appear on those letters as the billing partner or was it satisfactory to you to just have the name appear in the body of the letter?

Mr. KENNEDY. Senator, you would not normally identify somebody as the billing partner, no, sir.

Senator MACK. Then what would be the benefit of having her name appear in the body of the letter as opposed to somebody who signed it?

Mr. KENNEDY. I am not sure that you would say that there was any particular benefit given or sought in that case.

Senator MACK. If we were to ask to look at information with respect to letters that the associates put out, would we find it was pretty consistent that billing partners' names would appear in those letters?

Mr. KENNEDY. If the billing partner was actively involved in the matter, actively undertaking a supervisory role, it would not be surprising at all to me, Senator, that you would see some consistency there.

Senator MACK. Well, I appreciate that.

Mr. Lindsey, if you would go on with your explanation, then.

Mr. LINDSEY. Anyway, the second matter had to do with then serving as a broker, if you will, for the placement of that preferred

stock. My understanding is that Beverly Bassett indicated that under certain conditions they could do that but indicated that they needed to increase their working capital before that would be allowed. There were questions raised at the time because Beverly Bassett's brother, Woody Bassett, was an early and close, strong supporter of the Governor.

Senator MACK. How early and how close?

Mr. LINDSEY. Well, I believe going back to his first race, 1974, for Congress. That that relationship, that there was too much coziness there. And after the fact, the Rose Law Firm did answer questions with respect to this particular transaction.

Again, I assumed, though Mr. Kennedy may have been involved in this discussion at all, that I was walking through for Mr. Kendall what the various issues that had come up. This was clearly an issue; as you know, two Rose Law Firm letters to Beverly Bassett, listing what the two letters are. Beverly Bassett responded with the authority to do both. She had recently been appointed as Securities Commissioner, and so forth.

So I was simply relating to Mr. Kendall and to others there who had not followed that during the campaign, what that issue was and how we had responded to it during the campaign.

Senator MACK. I understand. Did you voice some concern, or did the group kind of have some concern with respect to whether they thought either there was the appearance of impropriety, or were you concerned about that at the time?

Mr. LINDSEY. No, sir. I've actually looked at the records. I believe that Beverly Bassett Schaffer took a more active role in trying to supervise Madison and—

Senator MACK. I'm not talking about her role. I'm talking about the role of the First Lady. I'm asking you the question, do you think if you had it to do over again, would you have advised that the First Lady shouldn't have done that? I realize this was not when she was the First Lady.

Mr. LINDSEY. I believe, in hindsight, if it would have taken this matter off the table, that all of us would have advised her. I don't think she would have required our advice.

Senator MACK. I was under the impression that she, in fact, made a point of trying to make sure that she did not represent clients before regulatory agencies.

Mr. LINDSEY. That is correct, and she, in fact, it is my understanding with respect to billings that came from the State, that she did not participate in those as well.

Senator SARBANES. Let's be clear about that because it is an important point but I think we want the record to be clear. My understanding is that she took herself out of the sharing in the proceeds that came to the Rose Law Firm from the Rose Law Firm representing State agencies.

Mr. LINDSEY. You are correct, I'm sorry.

Senator SARBANES. Which is a different point than the point that was just being made, as I understand it.

Mr. LINDSEY. Mr. Kennedy obviously would know.

Senator MACK. Let me get back to the point that I am pursuing anyway. The First Lady has, I think, responded on a number of occasions that she really made an effort to make sure that she didn't

represent a client before a regulatory agency, in fact went to the extent that Senator Sarbanes has raised to clarify how billing would take place. In response to a question, though, as to why she had called Beverly Bassett, the response was that she had made that call for the purpose of just getting the name of an individual that the letter should be sent to.

I find it really, really tests my—well, I'm not sure exactly how to phrase this. It's difficult to believe that she would risk breaking down this wall of protection that she was trying to build around her to make a call for the purpose of finding out who to send a letter to? I mean, that just doesn't make sense to me.

Mr. LINDSEY. Well, again, I don't want to speak for her, she can certainly speak for herself, but my understanding was that as—this is a Securities Commissioner. In many States a Securities Commissioner does not have regulatory authority over the State S&L's. In Arkansas they do, I think as they probably—but again, I am speculating—

Senator MACK. You don't think that she knew that?

Mr. LINDSEY. No. I think she was aware of that, but I'm sure she also, as she was in the process of discussing this, thought I wonder who over there actually handles the S&L side of the Securities Commissioner. She picked up the phone, called, and my understanding is, to ask who on your staff basically handles the S&L side of your regulation, and that, you know, that she then hung up the phone and that was the extent of any conversation she had.

Senator MACK. It seems like, again, a tremendous risk to take to be making that kind of call. I suspect, and I don't know—let me ask you this—

Mr. LINDSEY. Senator Mack, let me say, there is—you know, again, we have to try to put this into some context. What purpose would be served? I don't know of anyone who has looked at Arkansas law and the decision that the Securities Commissioner made with respect to this issue and suggested that that was the wrong decision. Mr. Massey, if I remember, said he thought it was a slam dunk.

Senator MACK. Right. Can I—

Mr. LINDSEY. And therefore, again, obviously in hindsight, it would have been better if she hadn't picked up the phone to find out who happens to be handling this matter within the Securities Commission. But again, to suggest as the only place that that can lead, that somehow she was seeking preferable treatment, I just—it doesn't work, because there was no preferable treatment.

Senator MACK. Sitting on this side of the desk, the requirement is for us to ask questions that could raise other possibilities. If we all just concluded what was written, there would be no purpose for this. So let me respond to your question. Because—in fact, I raised this the other day with Mr. Massey—my experience of 16 years in the banking business was that there was never a slam dunk when it came to the regulators, never, never. In fact—well, and I think Mr. Massey said in hindsight that he has come to that same conclusion.

Second point that I would make, this comment with respect to—and it is something that the First Lady has said I think many times—that they never issued the preferred stock, so what's the

harm? That's not the question. The question is was there any effort to try to influence, and I think there is enough evidence out there to at least have people raise questions as to whether there was an intent. I mean, it's not hard to get into a situation where one could conclude, as Mr. McDougal is trying to figure out how he can get his capital situation improved, that one of the ways to do it is through preferred stock. He has to find out whether he can have that issued. It's very important to him for the survival of the organization if it can be done. And people are sitting around saying how are we going to get this done.

Well, if we make the phone call, it might not be the right thing to do. I can just make the call and ask the question about who to inquire, where we should send the letter. The subliminal message that comes with that is one of saying, oh, we have now just notified the Arkansas Securities Commission that, in fact, this is an important issue.

Now, I'm raising that as a possible concern.

Mr. LINDSEY. Senator, my only point or response to that is this is not, in my opinion, a matter of judgment on behalf or discretion on behalf of the Securities Commissioner. She—this request was to—was in effect saying this is our interpretation of Arkansas law, do you agree in our interpretation? The Securities Commissioner said, yes, I agree with your interpretation. I have not seen anyone to suggest that there is any other interpretation that is reasonable of Arkansas law.

Senator MACK. Again, we can debate that particular point for a long time. I would ask you, do you know—I'm just curious—as you have followed this issue through, do you know whether Mrs. Clinton ever raised or contacted regulatory agencies for other clients?

Mr. LINDSEY. No, sir, I do not know that.

Senator MACK. Is that something that you all would have asked the question about?

Mr. LINDSEY. I never asked that question. It never came up.

Senator MACK. Would it make any difference to you if you knew that this was the only time that Mrs. Clinton had contacted a regulatory agency?

Mr. LINDSEY. No, sir. I know Mrs. Clinton. I know her to be a woman of integrity. You know, you're sitting there, you're talking, you say I wonder who is supposed to handle this, you pick up the phone. And after the fact, you think, you know, maybe I shouldn't, but—especially 11 years after the fact or 10 years after the fact, but the fact of the matter is, I do not believe that there was any attempt to get preferential treatment in this. I don't believe any preferential treatment was given. I believe Ms. Bassett has testified to that. I believe others have testified to that.

Senator MACK. Mr. Chairman, I think that's all I have for now.

The CHAIRMAN. Senator Sarbanes.

Mr. BEN-VENISTE. Let me follow up on a couple of things from Senator Mack. When you're using a general description of whether an associate sends out a letter under his own and sole signature, does it make a difference, or did it make a difference back 10 or 11 years ago, at the Rose Law Firm, whether the associate was a seventh-year or sixth-year associate or a first-year associate?

Mr. KENNEDY. Absolutely, Mr. Ben-Veniste.

Mr. BEN-VENISTE. As we have all seen, although Mr. Massey has progressed in his career as probably a senior partner now at the Rose Law Firm, at that time he was a first-year associate.

Mr. KENNEDY. That is correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. And the rules with respect to whether first-year associates write letters on their own to the heads of regulatory agencies would be one that I would think a firm like the Rose Law Firm would have a serious interest in precluding until that associate were able to prove himself or herself?

Mr. KENNEDY. That's correct, Mr. Ben-Veniste. Rick is and always has been very talented, but all of us have a learning curve.

Mr. BEN-VENISTE. So that, as you look at this in hindsight, do you find anything remarkable about the fact that Mrs. Clinton, as the senior partner supervising Mr. Massey, was a signatory to that letter along with Mr. Massey?

Mr. KENNEDY. No, I do not.

Mr. BEN-VENISTE. Now in terms of Mr. Lindsey's responses to the questions about the nature of the question put to the securities—on the securities issue of selling preferred stock, we have heard from Mr. Massey on this question under oath, who testified very clearly that, in his view, there was nothing that was done that was untoward, improper, sneaky, or in any way not aboveboard or proper for an attorney in connection with the dealings between the Rose Law Firm and Mrs. Schaffer and her department.

Mr. Lindsey, do you have some other view of this?

Mr. LINDSEY. No, sir, not at all. In fact, in response to Senator Mack's question about whether if I knew this was the only time that this had ever occurred, that would reinforce my position that she made effort not to—if you're suggesting that she somehow did it to gain influence, this doesn't sound like the time to do that. And therefore, you know, I do not believe there was anything improper.

Mr. BEN-VENISTE. Are you aware that, according to Beverly Bassett Schaffer, both the Federal Home Loan Bank Board representatives and the FDIC representatives that she contacted on this issue encouraged Madison Bank to raise funds in this way?

Mr. LINDSEY. I believe not only she testified to that, but I believe that Rick Massey also testified to that fact the other day.

Mr. BEN-VENISTE. So we are having all of this discussion and minute focus on an issue which every single person who has looked at it has called unremarkable, appropriate, and in the best interest of not only Madison Bank but their depositors to have taken place if it was possible; is that correct?

Mr. LINDSEY. Absolutely. One of the things, you know, this Committee knows better than I, was that during the latter part of the 1980's, the FDIC was slow to close banks down because frankly, there was not sufficient funds and therefore they were trying to do everything—my understanding was that they could, to try to put new capital in and preferred stock would obviously be a way that private investors would have responsibility for the continuation as opposed to the taxpayers.

Mr. BEN-VENISTE. The evidence that we have received in addition to that shows that by 1987, Beverly Bassett Schaffer had taken the position that Madison Bank should be closed. She wrote that position to the Federal regulators, and the Federal regulators

said, well, we don't have the money in hand to pay off the depositors, and we're much more concerned about other banks than little old Madison Bank, so you're going to have to wait. And indeed, it wasn't until 2 years later in 1989, that the bank was actually closed down.

And according to the testimony that we have heard, the great majority of the dollars lost by Madison Bank occurred as a result of that interim delay between 1987 and 1989, so the question I put to you is if Beverly Bassett Schaffer was in some way colluding with the Rose Law Firm or the Madison Bank, why in the world would she have taken the initiative to try to close the bank down?

Mr. LINDSEY. I agree 100 percent. In addition, it is my understanding that if she, as a State regulator, had shut the savings and loan down, that the depositors would not have had access to the Federal insurance, and therefore, other than urging the Federal Government to do so, as you indicated she began doing in 1987, there wasn't much she could do. In fact, I believe every Federal regulator who has looked at this has indicated that they believe she acted appropriately and in the best interests of the depositors.

Mr. BEN-VENISTE. So then—and to get off this subject with this, by way of conclusion, when we look at this situation, you can't look at it in a vacuum, to use another sense of that expression, but you must look at it in the context of whatever else was going on in 1987 in the country in connection with the S&L crisis. And at that point there wasn't enough money to pay off the depositors. What was needed was some time to come up with a plan so there wouldn't be an emergency and a run on the banks, and have bank failures willy-nilly all over the place.

Let me move on to, again, what I understand to be the focus of today's hearings, which was the meeting of November 5th, and go back to a point that Senator Murray had made. And let me ask you, Mr. Kennedy, going to page 12529 of the typed notes, at the very beginning of the meeting where there are these items 1, 2, 3, 4, who was doing the talking at that point?

Mr. KENNEDY. Mr. Kendall, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Would you read those four items to us?

Mr. KENNEDY. Number 1 says, "Gather the facts." Number 2 says, "Try to find out what's going on in investigations." Number 3 says, "Respond to requests that are made." Number 4 says, "Strategy for dealing with the media." And underneath that it says, "One person."

Mr. BEN-VENISTE. Were these items that Mr. Kendall indicated were ones that he was going to take responsibility for?

Mr. KENNEDY. Yes. As I previously stated, he sort of laid these out as things that he felt like he was going to start and needed to be doing.

Mr. BEN-VENISTE. In terms of the strategy for dealing with the media, what did that mean in terms of one person vis-à-vis the White House and one person vis-à-vis the private lawyers? Mr. Eggleston, do you have a recollection whether that was brought up at that meeting?

Mr. EGGLESTON. I remember the general issue of we ought to be having, instead—I mean, at the time Mr. Lindsey was responding, the White House also had Ms. Myers at the time, Mr. Stephano-

poulos was periodically involved in responding to inquiries. And as I recall, our notion was that that might result in problems regarding inconsistent answers and the like, and that Mr.—that at least in the White House, Mr. Lindsey was going to continue to have the role of dealing with the press.

I don't remember quite as much about what Mr. Kendall's role with responding to press questions was going to be, but he started to do it after this meeting as well, I believe.

Mr. BEN-VENISTE. Let me jump down to the notation that says, "Position: Clintons had lost money in WWDC." Let me go back to you again, Mr. Kennedy. Do you recall who was talking?

Mr. KENNEDY. I believe it was Bruce Lindsey at this point in the meeting, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Read your notes about what was discussed at that point.

Mr. KENNEDY. It says, "Position: Clintons had lost dollars in WWDC. Unable to substantiate this in detail. \$68,000 at least. McDougals \$92,000 lost—maybe."

Mr. BEN-VENISTE. The next item deals with Mrs. Clinton?

Mr. KENNEDY. The reference HRC, that refers to Mrs. Clinton, that's correct.

Mr. BEN-VENISTE. Right. Would you read that, please?

Mr. KENNEDY. "HRC representation of Madison—Not much activity representing people before agencies. Two RLF letters Beverly Bassett."

Mr. BEN-VENISTE. RLF meaning Rose Law Firm?

Mr. KENNEDY. Yes, sir, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Who was doing the talking at that point?

Mr. KENNEDY. Again, Mr. Lindsey, I believe.

Mr. BEN-VENISTE. There were points 1 and 2 under that.

Mr. KENNEDY. That's correct.

Mr. BEN-VENISTE. What were those two points?

Mr. KENNEDY. They refer, as best I can recall, back up to the letters, the two Rose Law Firm letters. The first, number 1, would be the broker-dealer matter; and number 2, it says, "PP of preferred stock." PP stands for private placement of preferred stock, which were sort of, at least in the campaign timeframe, the issues that had come out.

Mr. BEN-VENISTE. Now had there been discussion in the press at this point about the appropriateness or issue that we have been discussing here of Mrs. Clinton playing some role in her representation where a regulator had been appointed by the Governor?

Mr. KENNEDY. Yes, sir.

Mr. BEN-VENISTE. And at this point, I take it Mr. Lindsey was laying out what had been discussed in the press and what he knew about the subject?

Mr. KENNEDY. Yes, sir. He was sort of laying out the background as to, you know, what had gone on before.

Mr. BEN-VENISTE. So the very same matters that we have discussed here in detail where we now look under a microscope at what actually was being requested, what was the appropriateness of the action being requested, what was the role of Mrs. Clinton, what was the role of Mr. Massey and others, and what was the role of Beverly Bassett Schaffer, that had not been dealt with except by

way of a general allegation that there was something inappropriate that had gone on because of the political "coziness" that I see reflected in your notes, that some were charging involved in that relationship; is that correct?

Mr. KENNEDY. Mr. Ben-Veniste, if I understand your question correctly, the answer is yes, during the campaign there were accusations and allegations hurled. The campaign responded, and as best I can recall, that was pretty much what had gone on up to that point.

Mr. BEN-VENISTE. Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Kennedy, after November 5, did you have further meetings with Mr. Kendall about Whitewater or Madison?

Mr. KENNEDY. After November 5, no, sir, I don't believe I did so.

Mr. CHERTOFF. What about January 20 of the next year, 1994, did you have a meeting which Mr. Kendall attended?

Mr. KENNEDY. I don't recall such a meeting. As I testified before, I am sure I ran into Mr. Kendall in the White House.

Mr. CHERTOFF. Mr. Eggleston, did you have further meetings after November 5 with Mr. Kendall?

Mr. EGGLESTON. I remember further communications, yes, sure.

Mr. CHERTOFF. In addition to receiving the November 10th chronology, which I would like to put up on the Elmo, which I know you have a—well—

Mr. EGGLESTON. It might be helpful to me, I don't think you have a copy of that in my packet here.

Mr. CHERTOFF. I don't. And what I will do is give you a copy right now, but I have to warn you that this is not the actual document, because the White House, although they showed us the document this year, in a meeting since the new year—

The CHAIRMAN. About 2 weeks ago.

Mr. CHERTOFF. They refused to let us have a copy, they made us copy it down. So you're not misled, this is not the actual document, this is our typed-up version of what we were shown.

The CHAIRMAN. This is a typed copy of the memorandum from Mr. Kendall to you that we got out of your file or was received from your file. And again the White House would not give us a copy but after months we received it and it was brought over and it was retyped at the Committee's office. So if it doesn't look exactly like the same typing, it is, we hope, a fair and accurate representation of the document that you had in your file.

Mr. BEN-VENISTE. Mr. Chairman, you may have misspoken. It is not a memorandum from Mr. Kendall to Mr. Eggleston.

The CHAIRMAN. A chronology, draft chronology.

Mr. CHERTOFF. Now on the chronology, did you get later chronologies?

Mr. EGGLESTON. I don't remember getting later chronologies. I really—it's not clear to me I got this from Mr. Kendall as opposed to Mr. Kendall gave it to somebody else and it ended up with me. I don't remember getting other chronologies from Mr. Kendall or anybody else.

Mr. CHERTOFF. It ended up with you?

Mr. EGGLESTON. I have been told it was in my file so I am not disputing it.

Mr. CHERTOFF. You don't remember it?

Mr. EGGLESTON. Not particularly.

Mr. CHERTOFF. What were the further communications with Mr. Kendall about?

Mr. EGGLESTON. We had—a whole variety of press issues came up. He was involved in the commodities problem in the spring of 1994 and——

Mr. CHERTOFF. Were you involved in that?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. How were you involved in that?

Mr. EGGLESTON. I was involved in a fairly tangential fashion in that, trying to fashion a response. I remember getting ready for this hearing, I came across a document that I think you have because I saw an S number on it, that referenced a conversation that I apparently had with Mr. Kendall about this sort of arcane issue, which was really hot in about January or February of 1994, about the appropriate treatment of the capital gains tax.

Mr. Lindsey is nodding because he remembers that this was one of the burning issues of the day, because the Clintons had, on their 1993 tax return, had taken—had shown a \$1,000 capital gain and they had not taken a loss against it. And the press——

Mr. CHERTOFF. This was the sale of Whitewater; right?

Mr. EGGLESTON. This was the sale of Whitewater stock. And the press was all over the issue of how—of what was the impact, could they have taken a deduction, how much. And——

Mr. CHERTOFF. In fact, Mr. Eggleston——

Mr. EGGLESTON. —I think I had a conversation with Mr. Kendall about the appropriate treatment of that.

Mr. CHERTOFF. In fact, Mr. Eggleston, hadn't the IRS come in, in November, and raised questions about that when they were doing their regular audit of the President's tax returns?

Mr. EGGLESTON. I don't think that I remember knowing that. Others may have known it.

Mr. CHERTOFF. Did you know, Mr. Kennedy, that in November there was a discussion you participated in about how the IRS had raised questions concerning the way the Whitewater sale was treated on the tax returns?

Mr. KENNEDY. Yes, Mr. Chertoff.

Mr. CHERTOFF. Now, Mr. Lindsey, how many meetings did you attend after November 5 at which Mr. Kendall was present?

Mr. LINDSEY. I don't know if I can give you a number.

Mr. CHERTOFF. Give us an estimate.

Mr. LINDSEY. I don't know—I spoke to him often on the telephone. I would get a press inquiry, he would get a press inquiry, we would talk about who was going to respond.

Mr. CHERTOFF. How many meetings?

Mr. LINDSEY. Again, I clearly remember at least two meetings. I believe that sometime after this sort of Whitewater response team was created, that he attended some meetings of that, though he may not have been there, but I believe he was. I spoke with him about the time we were responding to turning over documents to the Department of Justice in December and January of 1994.

Mr. CHERTOFF. You mean, the issue about whether the President was going to ask for a subpoena?

Mr. LINDSEY. No, this was after—well, this was after the fact. This was—we turned over to the Department of Justice, in response to a subpoena for documents, we turned over about five boxes the first time, and I believe about five boxes the second time.

Each time we did that, I issued a press release from the White House, indicating that we were complying with the request from the Department of Justice for documents related to Whitewater.

I remember, at least one of those times, sitting down face to face with David Kendall and discussing it. The other time I may have discussed it on the telephone.

Mr. CHERTOFF. Who participated in the Whitewater response team, besides Mr. Kendall from time to time?

Mr. LINDSEY. Mr. Podesta, Mr. Eggleston, Mr. Nussbaum.

Mr. CHERTOFF. So you are not claiming that those are privileged meetings, I take it?

Mr. LINDSEY. No.

Mr. CHERTOFF. Can you give us an estimate? Was it about a dozen meetings you had with Mr. Kendall being present where the subject of Whitewater or Madison came up?

Mr. LINDSEY. I think I indicated in my deposition that I thought it was less than a dozen.

Mr. CHERTOFF. Let me ask you, Mr. Eggleston, your position was that on November 5 it was decided there was going to be a separation of function between the White House lawyers and the private lawyers; right?

Mr. EGGLESTON. I think I testified that—I think I did not testify to that. In fact, I think that in response to questions from Mr. Ben-Veniste, what I said was that there were certain things the White House people couldn't do, certain things Mr. Kendall could do, but as to many areas there would be a mixture of functions.

Mr. CHERTOFF. And you mixed together on some areas; right?

Mr. EGGLESTON. Sure. Press being the most obvious example.

Mr. CHERTOFF. But you did say that one of the things you believe was out of bounds for the White House was contact with third party witnesses; right?

Mr. EGGLESTON. No. What I said was I thought that would be problematic because you would read about it in the press. As a general matter I think, to my knowledge, we didn't do it very much because third party witnesses who were completely uninvolved wouldn't—weren't—on the members of the campaign or part of the White House and the like, you'd end up reading in the press that somebody from the White House called. My understanding was Mr. Kendall would generally do that.

Mr. CHERTOFF. Mr. Lindsey, was it your understanding and position that you were not going to reach out to third-party witnesses?

Mr. LINDSEY. I am not sure—if a press question came up, for example at either the Gerth or Isikoff meeting, certain matters came up, and if it involved talking to someone who was not a White House person in order to get the background and the information necessary to respond to that, I did not think it was inappropriate to contact and speak to them. I was not interviewing witnesses, you know, in preparation for a criminal defense of the Clintons.

Mr. CHERTOFF. When you did talk to witnesses, did you share that information in meetings at which Mr. Kendall was present?

Mr. LINDSEY. Again, I can't remember an instance but I am sure I did.

Mr. CHERTOFF. Let me put up on the Elmo what's been marked as S 12599. It's from your call list. It's dated September 17, 1993, if you want to look for it. Is that the same type of message system we talked about earlier?

Mr. LINDSEY. Yes, sir.

Mr. CHERTOFF. It shows at 4:01 p.m. on September 17, which is 3 or 4 days before David Hale was indicted in Little Rock, there was a message to you from Bill Burton. It says, "Needs to talk to you about a Jim McDougal problem. Jim Blair."

Now, Jim Blair was the lawyer who handled the sale of Whitewater for the Clintons in December 1992; is that correct?

Mr. LINDSEY. Among other things, yes.

Mr. CHERTOFF. Have you learned in the last week or so that he actually put up the money to allow Mr. McDougal to purchase that stock from the Clintons?

Mr. LINDSEY. I've read in the press that he has said that, yes.

Mr. CHERTOFF. You didn't know that at the time?

Mr. LINDSEY. No, sir.

Mr. CHERTOFF. You didn't know it in 1993?

Mr. LINDSEY. I believe I may have speculated about that but I did not know it, no, sir.

Mr. CHERTOFF. In fact, you speculated about it during the meeting on November 5; right?

Mr. LINDSEY. That's correct.

Mr. CHERTOFF. Now, you were in touch with Mr. Blair, back and forth, on dealing with issues having to do with Whitewater and Madison and Hale and Arkansas during 1993; right?

Mr. LINDSEY. I beg your pardon?

Mr. CHERTOFF. You were in touch with Mr. Blair during 1993 regarding Whitewater and Madison and the Hale investigation; is that correct?

Mr. LINDSEY. Well, clearly after the meeting that I had with Jeff Gerth, I believe, my notes reflect I called Mr. Blair, so yes.

Mr. CHERTOFF. What was the Jim McDougal problem?

Mr. LINDSEY. I don't remember. I have no idea what this is.

Mr. CHERTOFF. Do you know why—well, you know this is a message to you.

Mr. LINDSEY. Sure, but I don't know what—if I spoke to Bill Burton, I don't know what information he imparted to me related to this message.

Mr. CHERTOFF. Well, it says here, "Needs to talk to you about a Jim McDougal problem. Jim Blair." Am I correct that that indicates that he was passing on to you Jim Blair's need to talk to you about a Jim McDougal problem?

Mr. LINDSEY. Again, you can ask Mr. Burton. I mean, you know, the notes here, I don't know—I don't remember—this is obviously again my secretary. I don't know whether that's Mr. Burton saying he's—I'm not sure what Mr. Burton—

Mr. CHERTOFF. Did you get back to Mr. Blair?

Mr. LINDSEY. Mr. Blair or Mr. Burton?

Mr. CHERTOFF. Mr. Blair.

Mr. LINDSEY. I don't recall.

Mr. CHERTOFF. I'm going to put up what we have previously had from your notes, I don't even have a number on it but I think it's in your package, a set of your notes dated July 20?

Mr. LINDSEY. That's correct.

Mr. CHERTOFF. I'm sorry, this is a set of notes that are from September.

Mr. LINDSEY. Right. This was after the conversation I had with Jeff Gerth.

Mr. CHERTOFF. Right. Which would have been a couple of days after this September 17 message; right?

Mr. LINDSEY. That's correct.

Mr. CHERTOFF. You had a conversation with Jim Blair in which you indicated, middle of the page, "Heuer asked Brent Bumpers—asked whether indictment—against Hale, not McDougal." Do you see that in the middle of the page there?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. On the next page, it goes on to say, "McDougal might become target." Did you have this conversation with Mr. Blair? As you've indicated, this conversation with Mr. Blair was a few days after this September 17 message. Does that help you to remember that the McDougal problem was a concern Mr. Blair was conveying to you about whether Mr. McDougal was going to get indicted along with Mr. Hale?

Mr. LINDSEY. Again, I had no idea what Bill Burton—information Bill Burton was passing or whether I got that information. I do know that, after I spoke with Jeff Gerth, I called Mr. Blair the same afternoon and he imparted this information. It could well be that Mr. Burton had spoke to Mr. Blair and Mr. Blair had imparted some of this information to Mr. Burton. I don't know that.

Mr. CHERTOFF. Why would Mr. Burton get involved in discussions with Jim Blair about McDougal?

Mr. LINDSEY. I don't know. I mean, obviously Mr. Burton came to me, from the note, and indicated that he needed to talk to me about it. And you indicated that that was probably that he—well, you suggested that he was passing on information from Mr. Blair, so somehow he did get involved, if that is in fact the case.

Mr. CHERTOFF. Well, did you assign him or was he part of your effort to gather information in September about what was going on with these investigations?

Mr. LINDSEY. No, Mr. Burton served as Counsel to the Chief of Staff.

Mr. CHERTOFF. Mr. Blair was someone that you dealt with on an ongoing basis involving investigations or the progress of investigations that were going on in Arkansas; isn't that correct?

Mr. LINDSEY. At various points if I needed information that I thought he had, I would call him, yes. If there was—you know, another example was there was a series of questions sent both to Mr. Blair and to me involving this letter, in March 1992, I spoke to Mr. Blair about that letter.

Mr. CHERTOFF. Did you speak to Mr. Blair about Beverly Bassett Schaffer?

Mr. LINDSEY. I don't believe so.

Mr. CHERTOFF. Did you have meetings with Mr. Blair and Ms. Beverly Bassett Schaffer?

Mr. LINDSEY. No.

Mr. CHERTOFF. We'll come back——

Mr. LINDSEY. Well, meetings——

Mr. CHERTOFF. I'll make it very simple. You're in the same area, in proximity where you can have conversation. That's what I mean by a meeting.

Mr. LINDSEY. Yes, yes—I attended a University of Arkansas basketball game at some point in December or in January of either 1993 or January 1994. I am sure Mr. Blair was there, I believe Ms. Schaffer was there.

Mr. CHERTOFF. We'll get back to the content of any discussions at that meeting after lunch.

Mr. LINDSEY. I would not consider that to be a meeting.

Mr. CHERTOFF. We'll get back to the content of the discussions after lunch but let me just conclude by turning to one last issue raised by Mr. Ben-Veniste. He asked you some questions about 1987 when Ms. Beverly Bassett Schaffer made some efforts to close Madison. You are aware, are you not, Mr. Lindsey, that Mr. McDougal actually was forced out of the bank in 1986?

Mr. LINDSEY. Correct. I believe that Ms. Bassett attended and participated in the Dallas meeting where that decision was made.

Mr. CHERTOFF. Right. So that in 1986, as a consequence of the examinations that revealed sham transactions and all kinds of problems at the bank, in 1986 McDougal was forced out of the bank and was compelled to sever all ties with the bank; right?

Mr. LINDSEY. Again, I don't know about severing all ties. I think he—they entered some sort of order that removed him as president, I guess, or CEO of the bank.

Mr. CHERTOFF. So that in 1987, which is a year later, at the time that Ms. Schaffer was interested in closing the bank, that's after Mr. McDougal had gone.

Mr. LINDSEY. Well, if——

Mr. CHERTOFF. Correct?

Mr. LINDSEY. Yes, but again, after the 1986 meeting, I believe they ordered a new audit. That new audit came in in early, if I remember right, 1987, and it was the first time that I believed there was any indication or statement that they, in fact, were insolvent. It was at that point, when there was a determination in an independent audit of insolvency that Ms. Bassett wrote to the FDIC or whoever, FSLIC maybe at this time, and asked that they close Madison along with two other Arkansas S&L's.

Mr. CHERTOFF. My point is different, Mr. Lindsey. My point is that as of no later than February 1986, that the examiners had already identified criminal misconduct at the bank and that as of July 1986, Mr. McDougal was gone from the bank, so what Ms. Beverly Bassett Schaffer did in 1987 had little or no impact on Mr. McDougal; is that right?

Mr. LINDSEY. No, I don't believe that's right. Because we——

The CHAIRMAN. Let him say this to you.

Senator SARBANES. Let him answer.

The CHAIRMAN. Go ahead. Answer the question, and I'm going to suggest—just hold on, I'm going to let you answer the question to the best of your ability.

What I will suggest is that Counsel get the documents that will indicate whether that proposition put forth by Mr. Chertoff is correct. I don't know how much the witness knows or doesn't know with respect to specificity or whether he should even be asked this. I think it goes beyond what he should be required to know. I really do. I am trying to take your part, I really am.

Mr. LINDSEY. Thank you.

The CHAIRMAN. I don't think that that information necessarily lays within your knowledge or scope. You may have some idea about it, et cetera, but you may not have. We have the reports, what the reports indicate I think would be a fairer proposition as opposed to holding you to a specific date and time. That's my point, Mr. Lindsey. Now go ahead and respond.

Mr. LINDSEY. I appreciate that. What I quibble with is the term "criminal conduct." Mr. McDougal was indicted in 1989 and acquitted. I am not prepared on my end to say that he was engaged in 1987 or that there was any reports in 1987 that suggested he was involved in criminal conduct.

The CHAIRMAN. That's a fair observation.

Mr. LINDSEY. If I may make a point, earlier you went back and made a point with Mr. Eggleston about Jim Guy Tucker, a loan to Castle Water & Sewer, and that those were reflected in these SBA documents. I believe by the time that November 16th packet of material was brought, Jim Guy Tucker had indicated in the press that he was a borrower from David Hale's corporation. I believe that the McDougals had indicated that they in fact had borrowed from there, so I'm not sure that that information was not already publicly known at the time that Mr. Eggleston got that information.

Mr. CHERTOFF. Let me now, though, address the point you made. You were asked questions about both you and Mr. Kennedy, Mr. Lindsey, concerning—I think both Senator Mack raised it and Mr. Ben-Veniste—concerning Mrs. Clinton's involvement in this issue involving the Securities Commissioner. My recollection of Mr. Massey's testimony was that, although he viewed the legal issue as easy, there was a discretionary call that was going to be made down the line about whether to allow this particular bank to issue this stock.

Mr. LINDSEY. If I may, I believe Ms. Bassett—

Mr. CHERTOFF. Let me get to my question. Now, my question to you is this. The question then became, as Senator Mack raised it, why would Mrs. Clinton be involved in communicating with Beverly Bassett Schaffer about this issue when, as Mr. Massey indicated, she wasn't a securities lawyer, it wasn't her area. She called up. The letter that came back approving the issuance of stock on the part of Madison Guaranty was addressed, "Dear Hillary," indicating—and we haven't had Ms. Schaffer yet, we're going to get her in under oath—but indicating at least in her mind she was addressing this approval to Mrs. Clinton.

But now I want to ask you to comment, since you've commented on her role on one other document which I would like to put up and give to you.

Mr. LINDSEY. If I may, with respect to that, you know, when Ms. Schaffer or Ms. Bassett's discretion was involved, she came down against the interests of Madison. Mr. Massey, if I remember his testimony, thought that they should be allowed—that the purpose of raising—selling the preferred stock was to allow them to gain additional capital. Ms. Bassett indicated that they needed to raise their minimum level of capital before she would let them issue it, so that when it became a matter of Ms. Bassett's discretion, she erred not on Madison's side but against Madison.

Mr. CHERTOFF. You didn't have this information at the time; this is information you have collected, I take it, in preparation for responding to press inquiries?

Mr. LINDSEY. Absolutely.

Mr. CHERTOFF. I am not going to engage in a debate with you about things you didn't participate in, but what I want to show you is document 10255 and I want you to pay attention, Mr. Kennedy, as well, because I'm going to ask you about it. This is a document dated—I'm not sure it's in your packet—it's dated July 11, 1985. We are going to walk it down to you.

It is a memo to John Latham from Jim McDougal, and John Latham was the young bank officer whose name came up through Mr. Massey. He was the person who had known, had had a lunch with Mr. Massey, and more important, he's the person who wound up working along with Mr. McDougal on the bank side on this preferred stock issue.

It's from Jim McDougal, and it says, particularly item number 2, "I need to know everything you have pending before the Securities Commission as I intend to get with Hillary Clinton within the next few days." Now let me ask you, actually, Mr. Kennedy, you were managing partner of the firm at this point in time?

Mr. KENNEDY. Formal title is Chief Operating Officer but that's a good way to describe it, yes, sir.

Mr. CHERTOFF. Am I correct and is Mr. Massey correct that Mrs. Clinton was not part of the securities group or the corporate group, she was really a litigator?

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. Am I also correct that, based on your knowledge of the kind of work that she did at the firm, she was not someone whose regular practice took her before the Securities Commission dealing with approvals, regulatory approvals; right?

Mr. KENNEDY. I think that's fair to say, Mr. Chertoff.

Mr. CHERTOFF. There was a separate group at the firm that dealt with that?

Mr. KENNEDY. As I think Mr. Massey also testified, in the Rose Law Firm, particularly back then, the litigators had a little sort of wider practice than, say, litigators in a big city with a more detailed specialty.

Mr. CHERTOFF. When you say litigator, for people who aren't lawyers, that means people who go to court as opposed to people who deal with agencies and deal with issuing stock and things like that; is that right?

Mr. KENNEDY. That's accurate, Mr. Chertoff.

Mr. CHERTOFF. Now do you know what Mrs. Clinton's role was with respect to representing or advising Mr. McDougal on matters

pending before the Securities Commission? This wasn't her area of practice, was it?

Mr. KENNEDY. The short answer is, Mr. Chertoff, on a general basis, no, it was not her area of practice. I must say about this memo, your question to me, I don't know how it fits in the time-frame of things.

Mr. CHERTOFF. It's July 11, 1985—I guess they started working in April 1985, they issued their initial request with respect to getting the permission to have preferred stock on April 29, 1985. On May 14, 1985, they got the initial approval. And here is July 1985, which is about 2 months later, in which Mr. McDougal makes a broad request to get everything pending before the Securities Commission to him so he can get with Hillary Clinton. Based on your knowledge of her practice in 1985, did her practice involve general representation of people before the Securities Commission?

Mr. KENNEDY. As a general matter, I would say no.

Mr. CHERTOFF. In your notes of the meeting on November 5, the first page, there were some questions about, "HRC representation of Madison—Not much activity representing people before agencies. Two RLF letters Beverly Bassett. 1. Madison. 2. PP of preferred stock." Did you have, at this meeting, a copy of this memo?

Mr. KENNEDY. Of this memo here?

Mr. CHERTOFF. Yes, of S 10255.

Mr. KENNEDY. No, sir, I've never seen it before today.

Mr. CHERTOFF. Who was the person who spoke at the meeting about Hillary Clinton's representation of Madison, her role with Beverly Bassett, and the issue with too much coziness?

Mr. KENNEDY. As I previously testified, I believe it was Mr. Lindsey.

Mr. CHERTOFF. Mr. Lindsey, let me ask you, "too much coziness," that was your phrase; right?

Mr. LINDSEY. No, sir, I believe that's the way the press was trying to imply that the relationship, there was too much coziness in there.

Mr. CHERTOFF. Did you know about this memo before this meeting on November 5?

Mr. LINDSEY. I don't know the answer to that. This memo or at least reference to this memo has been in the press. I don't remember whether it was before or after. My guess is it's after but I can't—I've seen references to this memo in the press.

Mr. CHERTOFF. In your gathering facts for the meeting on November 5, did you make any inquiry to find out what other matters McDougal had pending before the Securities Commission that he needed to get with Hillary Clinton on?

Mr. LINDSEY. Well, I know of no other matters that were pending before the Securities Commission other than the matters that were already in the press at that time.

Mr. CHERTOFF. My question is, did you make an effort to gather them up?

Mr. LINDSEY. No. I mean, again, the Rose Law Firm indicated what their involvement with Madison and the Securities Commissioner was during the campaign. I had read and was familiar with their responses which, as I understood it, related to these two matters that are reflected in this memo.

Mr. CHERTOFF. Did their response include a response to this McDougal memo to Latham, "I need to know everything you have pending before the Securities Commission as I intend to get with Hillary Clinton within the next few days"?

Mr. LINDSEY. Again, this can certainly relate to these two matters. I don't know that it relates to anything more, and I don't believe they had anything more before the Securities Commissioner. If you do, I would like to hear it.

Mr. CHERTOFF. I think I'm out of time.

The CHAIRMAN. Senator Sarbanes.

Mr. Ben-Veniste, and then after this, we will take a 45-minute break.

Mr. BEN-VENISTE. I will be brief, just to follow up on this last line of questioning. I don't know Mr. McDougal, other than reading some things about him. Mr. Kennedy or Mr. Lindsey, do you have any question, but that in choosing to deal either between Mr. Massey, the first-year associate at the Rose Law Firm, or with Mrs. Clinton that Mr. McDougal was going to initiate any contact that he had on this securities matter with Mrs. Clinton?

Mr. KENNEDY. It makes perfect sense to me that he would go with Mrs. Clinton.

Mr. BEN-VENISTE. So that if you were to look at this memo that Mr. McDougal sent to Mr. Latham, in context of what was going on at that time, and I will tell that you Mr. Massey was performing a number of functions in connection with the regulatory issue, that you have testified about, just at this very time, would it not make sense that this memo would have referred to the very matters that we've talked about, the issue of issuing preferred stock and/or the broker-dealer question.

Mr. KENNEDY. Absolutely, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Do you know of any other securities matter that the Madison Bank had pending in 1985 before the Arkansas Securities Commission?

Mr. KENNEDY. I am unaware of any such matters.

Mr. BEN-VENISTE. And therefore, can you conclude with reasonable certainty on the basis of your knowledge of what the Rose Law Firm was working on on behalf of Madison in the summer of 1985, and in the absence of any other matters pending before Madison in the Arkansas securities agency, that Mr. McDougal was undoubtedly talking to Mr. Latham about the very matters about which we have heard all this testimony.

Mr. KENNEDY. I believe that to be correct, Mr. Ben-Veniste.

The CHAIRMAN. The Committee will stand in recess until 3:15 p.m., it's our hope that we can start promptly. We are in recess.

[Whereupon, at 2:26 p.m., the hearing was recessed, to be reconvened at 3:15 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. Well, we have reconvened as closely to 3:15 p.m. as you would expect in Washington. At this point we will turn to Mr. Chertoff.

Mr. CHERTOFF. Mr. Kennedy, I had asked you about——

The CHAIRMAN. Senator Faircloth is waiting. Senator, do you want to proceed now or do you want to wait a few minutes.

Senator FAIRCLOTH. I will wait.

Mr. CHERTOFF. I had asked you about a meeting you had on November 4, 1993, concerning an IRS audit. Do you remember that?

Mr. KENNEDY. Yes, Mr. Chertoff.

Mr. CHERTOFF. And have you produced to us some redacted notes of that meeting.

Mr. KENNEDY. Mr. Chertoff, I did not produce them to you.

Mr. CHERTOFF. That you recognize that you have before you a couple of pages of redacted notes from that meeting.

Mr. KENNEDY. That is correct.

Mr. CHERTOFF. That would be S 12595 and S 12596.

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. And am I also right that S 12596 is actually the first of 2 pages of notes.

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. I am going to ask that they be put up on the Elmo. While we are doing that, I want to ask you, there are several people identified as attending the meeting. Would you tell us who they are?

Mr. KENNEDY. Mr. Chertoff, Bob Jones is an accountant, who was assisting in tax matters for the Clintons; David Kendall, of course, is a lawyer with Williams & Connolly. Mike Berman is a consultant.

Mr. CHERTOFF. Is he a lawyer?

Mr. KENNEDY. Mr. Chertoff, I believe so but I do not know of my own personal knowledge.

Mr. CHERTOFF. To your knowledge he doesn't practice as a lawyer or he wasn't there as a lawyer?

Mr. KENNEDY. Mr. Chertoff, I tried to answer your question. I don't know what he does other than the fact that he is a consultant what else he does I just don't know.

Bob Barnett is a lawyer with Williams & Connolly; Beth Nolan, at the time, was an Associate Counsel to the President; Steve Neuwirth was, at the time, an Associate Counsel to the President.

Mr. CHERTOFF. This has to do with the regular practice of IRS to audit Presidential tax returns.

Mr. KENNEDY. That's correct; it is my understanding that Presidential tax returns are audited as a matter of course.

Mr. CHERTOFF. Now the portions that have been revealed to us that have not been redacted begin in the middle; it says, "Report—Bob Jones—Audit." Does that indicate that Bob Jones was making a report to the group about the progress of the audit?

Mr. KENNEDY. Basically that's right, Mr. Chertoff.

Mr. CHERTOFF. It says under Arabic numeral 1, why don't you read us what's under Arabic numeral 1 below and off to the side.

Mr. KENNEDY. It says, one in the hole, "House Sale Proceeds," then there's an A and a B, with an asterisk, and then there is a

C which says, "\$1,000 WW," WW is Whitewater, "Could be done with him" out to the side, to the right of a bracket or a—

Mr. CHERTOFF. Let me try and put this in context. We have seen in earlier hearings that there was an issue that arose that Mr. Foster worked on, and in fact, there were documents in Mr. Foster's office at the time that he died indicating there was some issue about what he called a can of worms having to do with the way in which the sale of the Whitewater stock in December 1992, was going to be treated for tax purposes.

Am I correct that the issue being addressed here, excuse me, for audit purposes, is how the tax return treated the sale of the remaining Whitewater stock from the Clintons to Jim McDougal in 1992, whether it was to be treated as a gain of a \$1,000, a zero transaction or something—show a loss?

Mr. KENNEDY. Mr. Chertoff, what I remember is that we were dealing with historical fact; in other words, there had been a treatment, which was the subject of the audit. And Mr. Jones, who was dealing with the IRS agent conducting the audit, was trying to ascertain what the facts were.

Mr. CHERTOFF. Just to remind you and everybody of where we are, the notes that Mr. Foster had in his office indicated that there were three possible options. There was an option of simply saying, not reporting anything, saying that there was a—such a loss on the part of the Whitewater transaction, as the Clintons had said publicly I think they said \$68,000 at one point, and \$44,000 at one point, there was the possibility of saying there was no gain, there was the possibility of actually claiming the loss that they said publicly they had, or there was the third possibility, which was the possibility of taking the entire \$1,000 sale of the stock as a gain, and essentially for purposes of filing the return, acting as if there was no loss.

And the Foster records indicated that Mr. Foster took the view that claiming the \$1,000 gain was the safest way to avoid opening the can of worms about justifying the claiming of a loss. Did Mr. Foster have discussions with you about that before he died?

Mr. KENNEDY. He did not.

Mr. CHERTOFF. What was your understanding about what was the concern of the auditing IRS agent about the claiming of a \$1,000 gain on the Whitewater stock sale?

Mr. KENNEDY. Mr. Chertoff, without quibbling with you, because I don't intend to, I am not sure based on my memory of this meeting that it is fair to say the agent had a concern. Although, it was something the agent was interested in, clearly. The issue was, if I remember correctly, and I want to say on the front end I am not a tax lawyer but the issue was ascertaining the basis in the shares, their tax basis in the shares from which you would compute gain.

Mr. CHERTOFF. You say you are not a tax lawyer.

Mr. KENNEDY. No, I am not a tax lawyer.

Mr. CHERTOFF. What was the discussion about this issue at this meeting?

Mr. KENNEDY. Well, again, my memory is that we were dealing with a matter of historical fact. In other words, there was an audit of the return, the entire thousand dollars had been reported as tax-

able gain, and the agent had raised an issue about the Clintons' basis in the stock.

Mr. CHERTOFF. When you say the basis in the stock, just again for people who are not tax lawyers, and I am, heaven knows, not a tax lawyer, but am I right that the basis of the stock is the point at which what you are claiming the value of the stock was at a certain point in time, and it is against that that you measure whether the sale of the stock represents a gain or not?

Mr. KENNEDY. That's correct, for tax purposes.

Mr. CHERTOFF. Was there an issue that the agent raised about the fact that the Clintons had publicly stated that they lost somewhere between \$40,000 and \$60,000 on this project, yet they were claiming a zero basis for purposes of taking the full \$1,000 gain on the stock sale?

Mr. KENNEDY. Mr. Chertoff, I'm not sure what was in the agent's mind. The discussion that I remember was relatively simple. Mr. Jones was wanting to get what information he could so that he could discuss the basis determination issue. And that's basically what this issue was. He was saying what should I say back to him as to how the basis was determined.

Mr. CHERTOFF. What was he told to say?

Mr. KENNEDY. Well, he wasn't told to say anything because no one at the meeting had any specific knowledge about how the tax treatment had been arrived at.

Mr. CHERTOFF. There was an agreement to get back to Mr. Jones and give him some information to give to IRS?

Mr. KENNEDY. If I remember correctly, I think we identified the Clintons' accountant in Little Rock as someone he could talk to about this issue.

Mr. CHERTOFF. On the next page if you want to go to the next page of the notes, what does it say there, "Agent to discuss reporting of income from WW"?

Mr. KENNEDY. Yes, it says, "Agent to discuss reporting of income from WW," which is Whitewater.

Mr. CHERTOFF. And then it says, "Zero Basis," an arrow, "Sale of WW shares."

Mr. KENNEDY. "Not have reported enough income," with an arrow, and it says, "No problem."

Mr. CHERTOFF. What does that mean?

Mr. KENNEDY. Again, I am not technically qualified to conduct a technical explanation of these issues. But basically, one's basis in an asset is affected by the stream of income, or lack of income, that one receives with regard to that asset.

Moneys received from an investment can be income to you, ordinary income, or that can be return of capital, in which case they will affect your basis in the shares. And so, there is evidently, the agent had a question about the reporting of income, I can only assume from previous tax returns, with regard to Whitewater, as it would impact upon the Clintons' basis in the Whitewater shares that they owned.

Mr. CHERTOFF. How did this all get resolved with the agent?

Mr. KENNEDY. You would have to ask Mr. Jones.

Mr. CHERTOFF. Why were you at the meeting?

Mr. KENNEDY. I was there to assist, primarily in the preparation of the 1993 tax returns for the Clintons.

Mr. CHERTOFF. Why was Mr. Kendall there?

Mr. KENNEDY. He was there along with Mr. Barnett. You would have to ask them as to what they thought their roles were. Again, I was under the impression that they were there to assist in the preparation of the tax return as well.

Mr. CHERTOFF. Finally, I see I have a minute left and just to close it off, I had asked you earlier whether you had a meeting with Mr. Kendall on January 20, 1994. Let me show you S 12597 and S 12598.

Mr. KENNEDY. Yes, I have those, Mr. Chertoff.

Mr. CHERTOFF. Was Mr. Kendall at that meeting?

Mr. KENNEDY. No, sir, I don't believe he was.

Mr. CHERTOFF. Was there any representative of his firm at that meeting?

Mr. KENNEDY. No, sir, I don't believe so.

Mr. CHERTOFF. Was he discussed at the meeting?

Mr. KENNEDY. Yes, he was.

Mr. CHERTOFF. This was a meeting of White House attorneys and some people who were involved in consulting?

Mr. KENNEDY. Mr. Chertoff, these are notes of a—I believe of a daily staff meeting that occurred in the White House Counsel's Office. We met everyday in the morning. And these are notes of a meeting that took place in the White House Counsel's Office.

Mr. CHERTOFF. It indicates at the top James Carville and Paul Begala. Did they attend the White House Counsel's meeting?

Mr. KENNEDY. They did not.

Mr. CHERTOFF. What was the reason their names were noted at the top?

Mr. KENNEDY. Mr. Chertoff, I am not certain about this but what I think is is that they had been identified as suggesting that a more organized approach within the White House be arrived at with regard to Whitewater matters.

Mr. CHERTOFF. Now these are your notes; right?

Mr. KENNEDY. Yes, they are, Mr. Chertoff.

Mr. CHERTOFF. We've talked about a chronology which we've put up on the board which Mr. Kendall furnished to Mr. Eggleston. There is a reference here under Arabic numeral 1, "Chronology of events: Neil Eggleston." Was Mr. Eggleston given the assignment of maintaining a chronology of events?

Mr. KENNEDY. That's what the notes indicate, Mr. Chertoff.

Mr. CHERTOFF. What are the entries underneath that?

Mr. KENNEDY. It says, "Chronology of events: Neil Eggleston." What follows next, which I will read to you, is a source of information for him to prepare such a chronology. And it says, "Documentary record, Kendall, principals" with an A, "Bruce Lindsey, WHK 3," that's me.

Mr. CHERTOFF. So Mr. Eggleston was now tasked as of January to use or assigned as of January to maintain a chronology of events; right?

Mr. KENNEDY. Sort of what the notes indicate, yes, sir.

Mr. CHERTOFF. This was part of the effort Mr. Carville and Mr. Begala had suggested about responding to Whitewater matters; is that right?

Mr. KENNEDY. I don't want to be too specific in this regard. For example, one could interpret your question to say Mr. Carville and Mr. Begala had said prepare a chronology.

Mr. CHERTOFF. No, that they suggested in general a more aggressive response.

Mr. KENNEDY. A more organized response.

Mr. CHERTOFF. The five sources on which Mr. Eggleston was supposed to deal with were the documentary records; right?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. And Kendall, that meant that Mr. Kendall was supposed to be getting information to Mr. Eggleston?

Mr. KENNEDY. That he was a source of information.

Mr. CHERTOFF. Principals meaning people who actually had first-hand knowledge?

Mr. KENNEDY. Correct.

Mr. CHERTOFF. Bruce Lindsey and you.

Mr. KENNEDY. Correct.

Mr. CHERTOFF. So is it fair to say based on that that this was anticipating as late as January 1994, that there would be continued contact between Mr. Eggleston and Mr. Kendall for purposes at least under this heading of Mr. Kendall furnishing information to Mr. Eggleston; right?

Mr. KENNEDY. Well, Mr. Chertoff, the proper answer is that the White House Counsel's Office was organizing itself to make a more organized and better response primarily to press inquiries, and to deal with the public.

Mr. CHERTOFF. All right. So the information going from Mr. Kendall to Mr. Eggleston was supposed to be for press purposes?

Mr. KENNEDY. Primarily, yes.

Mr. CHERTOFF. And that was the assignment of the White House Counsel's Office here?

Mr. KENNEDY. As Mr. Kendall—excuse me, as Mr. Eggleston has testified in testimony, and testimony I would second, it was always contemplated that there would be cooperation between the White House in its official capacity the White House Counsel's Office and Mr. Kendall in his private capacities. It was inescapable.

Mr. CHERTOFF. Let me go to the next page. The next page has Arabic 4 and it is kind of the reverse. This is Mr. Kendall, and would you read the three headings under what Mr. Kendall is supposed to do?

Mr. KENNEDY. Four in the hole. It says, "Kendall potential public presentation, possible assistance from White House Counsel, partial release of documents W&C." I think that refers to Williams & Connolly.

Mr. CHERTOFF. Now this was what Mr. Kendall was supposed to be doing in his capacity as representing the President individually; is that right?

Mr. KENNEDY. I want to emphasize the word potential, that this was something that was evidently under discussion that he might make a public presentation.

Mr. CHERTOFF. And it says, "Possible assistance from WHC." The idea was that the—now we are looking at the reverse side of this, the White House Counsel's Office was going to be assisting Mr. Kendall in doing his possible public presentation.

Mr. KENNEDY. With regard to information and then responding to the press, et cetera, yes, sir.

Mr. CHERTOFF. Again, this is under the rubric of press, that you would have under Arabic numeral 1 for purposes of dealing with the press, you would be getting information from Kendall to Eggleston. Under Arabic numeral 4 to help Kendall with a possible presentation you could have possible assistance from the White House Counsel's Office to Kendall, and all of this is under the claim of dealing with the press.

Did it occur to anybody at any meeting you've ever attended to the White House Counsel's Office to say something to the effect of, you know, under this theory that all we are doing is dealing with the press, there is pretty much no limitation in our ability to work with the investigating agencies or with the private defense attorneys, since everything we do potentially has a press aspect? Did anyone ever consider that?

Mr. KENNEDY. To the contrary, Mr. Chertoff. I mean, as Mr. Eggleston has testified, what we were trying to do is maintain activities in proper spheres. But the press had to be responded to. And the White House had, if anything, a bigger role to play in that than Kendall because that's where the press inquiries came, most of them anyway.

Mr. CHERTOFF. So for purposes of dealing with the press, and this meeting in January there was a discussion of having information flow from Kendall to the White House Counsel's Office, and from the White House Counsel's Office to Kendall; is that right?

Mr. KENNEDY. Yes, but—the answer is yes, but let me observe one other thing. Other parts of the note designated White House spokesman, it says, "Stephanopoulos, Lindsey, Nussbaum, each day go through the WW clips," those are Whitewater clips that refer to the news reports generated each day in the White House, "go through clips and come up with answers. Inaccurate statements in the clips, address. New things. Go back with regard to stuff that's been written." This meeting was about responding to the press about making public presentations.

Mr. CHERTOFF. Was there any relationship between the date of this meeting, January 20th, and the date on which Mr. Fiske was named as the Independent Counsel?

Mr. KENNEDY. I don't know what date that was on, Mr. Chertoff.

Mr. CHERTOFF. I think it was around January 20th.

Mr. KENNEDY. Could have been.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Mr. BEN-VENISTE. Is he finished?

The CHAIRMAN. He is finished with this line, if you want to go. Senator Faircloth is waiting.

Mr. BEN-VENISTE. Let me direct this to Mr. Eggleston, and if you would, there were questions asked about the chronology prepared by David Kendall and dated November 10, 1993. Do you have that in front of you?

Mr. EGGLESTON. I do.

Mr. BEN-VENISTE. Have you had a chance to review that chronology now?

Mr. EGGLESTON. I have looked at it while other members of this panel have been asked questions.

Mr. BEN-VENISTE. OK, it is 7 pages. This is a retranscription of Mr. Kendall's notes which were made available fully to the Committee for its inspection and copying. Is there anything in that chronology that reflects some information that, to your knowledge, was not available either through some public record or in the press as of November 10, 1993?

Mr. EGGLESTON. I just looked through it quickly. I certainly—I didn't notice anything, I actually noticed that many of the entries are referenced to press reports. There are a lot of Washington Times reported, Arkansas Democrat-Gazette, I am not sure I can quite answer your question because I haven't looked through it that carefully, but I—it is dates various things occurred.

Mr. BEN-VENISTE. There is no obvious confidential information that comes from some undocumented source that's reflected in this chronology, is there?

Mr. EGGLESTON. I didn't see any.

Mr. BEN-VENISTE. The idea of getting a chronology together, given the general confusion that existed then and probably still exists about what Whitewater is all about, was deemed to be a pretty good starting point for essentially the new kid on the block, David Kendall who was coming in, to represent the Clintons personally; is that fair to say?

Mr. EGGLESTON. I think that's right. As this Committee knows now better than I, the number of individual players and entities and the events took place over a substantial period of time. It was pretty impossible and this would have been a very logical thing for Mr. Kendall to have done first thing, just as a way to try to get the events, the people, and the entities organized in his own head.

Mr. BEN-VENISTE. And indeed, as thorough as Mr. Kendall is, I note on the last page and it is not to be picky, but the reference for July 21, 1993, "Offices of Capital Management Services Raided by FBI," is accurate, but the second entry under that date, Vince Foster suicide is inaccurate, is it not?

Mr. EGGLESTON. I think that's right, it was July 20th.

Mr. BEN-VENISTE. It was the day before. So that looking at this chronology which was sent over to the White House by Mr. Kendall and ultimately made its way into your files, there isn't anything particularly remarkable or breathtaking or new as of the date it was compiled, contained in that chronology; is that fair to say?

Mr. EGGLESTON. I think that's fair to say. Again, I looked at it very quickly but I certainly didn't see anything in my review of it.

Mr. BEN-VENISTE. Then on a going forward basis, it was understood that this chronology would be continued to be corrected where necessary, updated, expanded so that the body of information reflecting all of these complicated transactions going back to 1978 would be as accurately portrayed as possible and serve as a reference vehicle for those who needed to go back to it; is that basically what happened?

Mr. EGGLESTON. I think that is right, including later on as I started to do something like this including current things, statements by Members of the Senate about various aspects, so that we would have in one document, we would be able to find various references, we were forever remembering a good line in some story and nobody could remember what it was and where the story was and couldn't find it.

Mr. BEN-VENISTE. All of the statements in the Senate by now, it must be some humongous document. I have my mental picture of the giant ball of string.

Mr. EGGLESTON. We had the good sense to stop at some point.

Mr. BEN-VENISTE. But this was the genesis back in November 1993, when you were pulling all this stuff together?

Mr. EGGLESTON. I think that's right.

Mr. BEN-VENISTE. I would yield the balance of my time back to Senator Faircloth.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Lindsey, we have or will have on the screen a copy of The New York Times editorial of December 20th. Would you tell me, did the President read this, and as we understand make handwritten notes on it.

Mr. LINDSEY. Yes, sir, my understanding is he did.

Senator FAIRCLOTH. Could you tell us why the White House is refusing to make this available to us, and what his notes were?

Mr. LINDSEY. I believe you should address that to someone, Ms. Sherburne or someone in the Counsel's Office who is dealing with this Committee.

Senator FAIRCLOTH. Well, we have.

Senator SARBANES. We know the contents of it that were made available. What they have not done is actually provided the paper with the handwriting; that's all.

Senator FAIRCLOTH. Why not?

Senator SARBANES. Counsel's examined it.

Senator FAIRCLOTH. Why not?

Senator SARBANES. I guess they don't want you running around throwing the President's handwriting up all over the place. My understanding is there is generally a policy not to turn over handwritten communications of Presidents as a general operating principle in the White House. But they have had Counsel come down and look at it and so we know the contents of what he said.

The CHAIRMAN. I believe, and we will develop this later with Mr. Chertoff, that there appears to be a dispute with respect to the contents. Notwithstanding that the Committee has for a period of time now made known its intention, that the policy of the White House attempting to give us documents that we can copy, and not furnish us with copies of the documents is not responsive to the Committee or the American people.

There is no reason for it. It just takes time, causes delay, and causes controversy. So I am hoping that between now and our next session, we will be able to work this out with Counsel, to provide for the copy. I understand as recently as yesterday we've asked for

it, we were told that would not be the case. I am hoping that we can resolve this. If we do not resolve it, it is a serious matter. I don't believe Ms. Sherburne, it is within the capacity for you or your superiors to make judgments as to what you will or will not turn over.

And I also would point out to you, a number of documents, including notes that we've referred to today, were only just turned over to us on Sunday. Now that's not being forthcoming. You have had these documents in many cases for weeks and months, and then you complain about delay. It is not right when members of the White House staff complain about delay. Much of that delay is the result of the failure to comply with reasonable requests.

So we will be persistent about this because you don't have a right, nor does anybody else. There is no legal basis to say well, we will let you look at it but you can't have a copy.

Continue, Senator.

Senator FAIRCLOTH. Well, you know, it might seem to be much ado about nothing, but I see Ms. Sherburne there, do you have a copy of it?

Ms. SHERBURNE. Do I have a copy with me, Senator?

Mr. FAIRCLOTH. Yes.

Ms. SHERBURNE. No, I don't.

Senator FAIRCLOTH. Would you get it to us?

Ms. SHERBURNE. I would be happy to bring it up for you to review, Senator.

Senator FAIRCLOTH. All right, thank you.

Mr. Lindsey, according to The New York Times editorial which we've talked about here, Beverly Bassett Schaffer's name was mentioned as having knowledge of how and why Madison Guaranty Savings & Loan was kept open.

To clarify, this is Beverly Bassett Schaffer who was appointed by Governor Clinton, to direct the Arkansas Securities Commission and to supervise Madison in that role. Her husband, Archie Schaffer is also an executive with Tyson Foods.

Mr. LINDSEY. I don't believe they were married at this time. They are married now; they were not married at the time she was the Securities Commissioner.

Senator FAIRCLOTH. Did you have any conversation with either Mr. Schaffer, Beverly Bassett—if she was not married at the time—Jim Blair, or Denver attorney Jim Lyons about Whitewater or Madison Guaranty, and her version of events during the 1992 campaign?

Mr. LINDSEY. Did I have a conversation with any of those people during the 1992 campaign?

Senator FAIRCLOTH. No, during the Clinton campaign for President concerning Madison Guaranty or Whitewater. Did you discuss Madison Guaranty or Whitewater and her version of events, during the campaign for President in 1992.

Mr. LINDSEY. It was an issue during the campaign. If you are asking me whether I spoke with Jim Lyons about that, the answer is probably yes, though I don't recall specifically. If you asked whether I talked to Beverly or to Archie Schaffer, or to—who was the other person?

Senator FAIRCLOTH. Jim Blair.

Mr. LINDSEY. Jim Blair, I don't recall speaking to Jim Blair. I may have spoken to Beverly or Archie at some point.

Senator FAIRCLOTH. This was general discussion during the campaign?

Mr. LINDSEY. It was an issue, it was raised in the original article by—I think in the original article by Mr. Gerth and it became an issue during the 1992 campaign, yes.

Mr. FAIRCLOTH. Then after Bill Clinton became President, did you have any conversation with any of the people I previously mentioned, about Madison Guaranty in 1993, prior to October 31st, when The Washington Post article ran on this subject?

Mr. LINDSEY. Again, I do not believe I spoke to Beverly, I don't believe I spoke to Archie, I probably at some point—you say Madison and I am having some trouble with that. I am sure I spoke with Jim Lyons, I know I spoke to Jim Lyons.

Senator FAIRCLOTH. Did you have conversation with him about Madison Guaranty? These people I mentioned before, did you discuss with them Madison Guaranty?

Mr. LINDSEY. And the regulation of Madison or Madison as it relates to McDougal and to Whitewater?

Mr. FAIRCLOTH. As it relates to McDougal and Whitewater before The Washington Post article ran?

Mr. LINDSEY. As you know, Senator, I started getting press inquiries in the middle of September from Mr. Gerth, from Mr. Isikoff, and from others, about David Hale, about Madison, raising McDougal again, yes, I am sure I know I probably spoke with Mr. Lyons about those matters. There are notes of a meeting—of a discussion I had with Jim Blair which I would not characterize as relating to Madison, but I will point the notes out to you, just in case you do think that they relate to Madison, I do not believe I spoke to Archie Schaffer or Beverly Bassett before the first of November.

Senator FAIRCLOTH. Did you speak to the President about the December 20th editorial in The New York Times?

Mr. LINDSEY. The President's comments on the editorial were sent to me. I do not recall speaking to him directly about it after that but I may have.

Senator FAIRCLOTH. Do you know what was discussed?

Mr. LINDSEY. The copy I had actually had the comments written out. The comments were to the effect that Beverly did a good job in the campaign, we need to stay on top of this, will she again or can she again.

Senator FAIRCLOTH. Following the editorial, did you have any conversation with Ms. Bassett or Mr. Schaffer, Jim Blair or Jim Lyons, or receive any faxes from these people regarding the December 20th editorial? Between then and December 28th, did you hear from them, did they respond to you or did you respond to them?

Mr. LINDSEY. I don't know if I reached out or talked to any of them before the 28th, so I—you know, if you showed me a fax from someone, it might refresh my memory but I don't have any memory of speaking to any of them between the 22nd and the 28th. I would just note that Christmas fell in that period. I probably went home.

Senator FAIRCLOTH. Where were you on December 28th, do you remember?

Mr. LINDSEY. I have been told at some point we attended a basketball game in Fayetteville. I have been told that that was on December 28th. I have not gone back to confirm that, but I could well have been in Fayetteville on the 28th at a University of Arkansas basketball game.

Senator FAIRCLOTH. Did you discuss Whitewater or Madison Guaranty while you were in the Tyson box with Beverly Schaffer or Archie Schaffer?

Mr. LINDSEY. Probably.

Senator FAIRCLOTH. What was the discussion about?

Mr. LINDSEY. I think I raised with Archie whether or not Beverly would get out and do press inquiries and others with respect to her role and what she did and get that story out.

Senator FAIRCLOTH. Who else took part in the discussion?

Mr. LINDSEY. Again, I was asked. I was asked whether the President was there. The President was at the game. I don't have a memory of him being.

The CHAIRMAN. Wait a second, please. Weren't you at a box? Is that one of these sky boxes?

Mr. LINDSEY. This is a large box, yes.

The CHAIRMAN. Sky box. Was the President in the box?

Mr. LINDSEY. The President, during most of the game, sat in the stands. He was probably in the box at some time during the time but during the actual ball game my remembrance is that he sat in the stands. So there are times when the President was in the box, I'm sure. I do not remember when I spoke to Archie, whether or not the President was in the box or not.

Senator FAIRCLOTH. Let me ask you this question.

The CHAIRMAN. If I might intrude upon my friend. Mr. Lindsey, it is not a game. And when you answer the Senator as you began to, you would have us believe that you didn't even recall, unless we pursue this, that the President was in the box. You went to this game, you know the President was there. You knew we were going to discuss this subject, you looked at your notes, you refreshed your recollection, didn't you, prior to today?

Mr. LINDSEY. I have no notes or recollection on this, Senator.

The CHAIRMAN. You have no recollection about this?

Mr. LINDSEY. I have a recollection that I was at the ball game.

The CHAIRMAN. You knew the President was there?

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. You knew the Schaffers were there?

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. And that they were in that box?

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. It was a Tyson box?

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. All right. At least you're now answering in a responsive manner instead of dancing all over the place.

Mr. LINDSEY. May I, Senator?

The CHAIRMAN. No, listen. You want to do it later on but we are going to go back to Senator Faircloth.

Senator Faircloth.

Senator SARBANES. Mr. Lindsey, you will get an opportunity to answer the question on my time when it comes.

Mr. LINDSEY. Thank you, sir.

Senator SARBANES. I want to assure you of that. It leaves a certain lag time in getting the response to the assertion but you will get that chance if you just take it easy.

Senator FAIRCLOTH. The very question is this: Did the President discuss with Beverly Bassett Schaffer or Archie Schaffer, Madison or Whitewater during this time?

Mr. LINDSEY. Senator, the only way I would know is whether I was present or whether he told me. I don't believe he told me of any conversation he has had. I had a conversation with Mr. Schaffer, with Archie Schaffer, about this. I do not believe, I do not know whether the President was there during my conversation, but beyond that, I have no knowledge.

Senator FAIRCLOTH. So you don't know whether the President discussed with the Schaffers Madison Guaranty or Whitewater, whether it was discussed with the President or not?

Mr. LINDSEY. No, I know that I had a discussion with Archie about whether Beverly would—would talk to the press, I do not know whether the President was around during that conversation.

Senator FAIRCLOTH. All right. Did you or the President discuss with Jim Blair Whitewater or Madison?

Mr. LINDSEY. I don't recall. I mean, again, the only thing I can tell you about the President is what he did in my presence. If Jim Blair was there and he and I were talking we might have talked about things like the editorial and the press. That was coming out. I don't have a specific recollection of having a conversation with Mr. Blair about Whitewater or Madison during that game.

Senator FAIRCLOTH. After December 28th, did you have any discussion with Beverly Bassett, Archie Schaffer, Jim Blair, or Jim Lyons—in dealing with the press or the inquiries?

Mr. LINDSEY. Yes.

Senator FAIRCLOTH. You did have.

Mr. LINDSEY. I spoke with Archie Schaffer on several occasions. I spoke with two of my law partners on several occasions about it. At least one or two of my law partners about it. I don't again recall speaking to Jim Blair about this particular matter, and whether I spoke to Mr. Lyons or not, it would—I don't remember speaking to him with the purpose of gathering information. If I spoke to him I was just telling him what I was doing.

Senator FAIRCLOTH. Would you tell us what was discussed, just in plain language you tell me.

Mr. LINDSEY. Yes, sir. Ms. Beverly Bassett during the campaign had put out, spoken to the press, spoken to Mr. Gerth, in fact, I later learned wrote three memos to Mr. Gerth describing what her role had been during the late 1980's in the regulation of Madison Guaranty.

As I say, I have reviewed the records; I reviewed a chronology of what she did, what occurred, I believe that any reasonable person who looks at it will find that she went out of her way to try to bring this to the proper regulators' attention and to get action. She communicated that during the campaign.

Obviously we wanted her to continue to communicate that. She was reluctant to do so. She was reluctant for several reasons. One, I think she was reluctant because she had spent so much time with

Mr. Gerth and she felt like the treatment that she received in The New York Times article and in other articles was not fair, did not reflect the information she provided. Another reason was, during this same time period, there were people who basically were, I will use the word stalking because I believe Ms. Bassett has used that word, in fact one of your current employees, Mr. Bossey, went to Fayetteville in early January 1994, and according to Ms. Bassett stalked her from one place to the other.

Senator FAIRCLOTH. He was not an employee of mine.

Mr. LINDSEY. That's right. He is now.

Mr. FAIRCLOTH. I didn't know him.

Mr. LINDSEY. He was working for Citizens United, Floyd Brown's organization, I believe, at that time.

Senator FAIRCLOTH. He tells me he was with NBC.

Mr. LINDSEY. He was with an NBC crew. He indicated to the press at that time that he was not there with them that he had just hitched a ride, I don't know maybe Mr. Bossey could testify as to what his role was but the fact of the matter is—

The CHAIRMAN. Look. Come on. I have given you great latitude. You have such great recall on events that you weren't even at. When we talk and ask you questions about events you were at, that recall is missing. I tell you, you were well programmed for that, but that's OK, but let's stick to the issue.

Mr. LINDSEY. The issue is why Ms. Bassett Schaffer was reluctant to go out there and do press, and as I said part of it was a reluctance because she felt like she spent a lot of time with Mr. Gerth and that she was not treated properly in those articles and the information she provided was not dealt with fairly. And two, because she believed that people were, and again, stalking her, following her, following her into buildings, being there when she came out, she got to the point that she called her husband to come down because she was concerned about this. All of this was reported in the press, which is why I have fairly good recall about it.

Senator FAIRCLOTH. Let me ask you, were there ever discussions between you and Mr. or Mrs. Schaffer about what the White House would do to help protect Ms. Schaffer from the press criticism?

Mr. LINDSEY. No, I don't believe so. Again let me finish my answer. I do not believe I spoke to Ms. Schaffer directly because her husband told me that she was very upset, and I don't believe that I broached these subjects directly with her.

I did have conversations with Mr. Schaffer. I did have conversations with my law partners, who were also Ms. Schaffer's law partners, about this, because they were assisting her in trying to put together a chronology of exactly what she had done as Securities Commissioner with respect to Madison.

Senator FAIRCLOTH. Did you discuss with them what the White House—did you all attempt to help her with the press criticism?

Mr. LINDSEY. No, sir. We weren't doing a very good job with the press ourselves. I don't think we ever offered to help her.

Senator FAIRCLOTH. Did she or her husband display displeasure or frustration with the fact that you didn't help them or were not adequately helping them handle the controversy?

Mr. LINDSEY. I don't recall that. That doesn't ring a bell with me, Senator.

Senator FAIRCLOTH. My next question is to both Mr. Kennedy and Mr. Lindsey. In David Watkins' memo that was released, that we all have a copy of, he mentions a problem.

Mr. LINDSEY. The one involving the Travel Office?

Senator FAIRCLOTH. Yes, he mentions a problem with the Secret Service, "An issue developed between the Secret Service and the First Family. And after the Secret Service incident, it was made clear that I must more forcefully and immediately follow the directions of the First Family."

Now all of you are close personal friends of President and Mrs. Clinton and knew what was going on in the White House. Would you tell us what the Secret Service problem was?

Mr. KENNEDY. Senator, I cannot. I don't know.

Mr. LINDSEY. I have never spoken to either the President or First Lady about a Secret Service problem. I have read stories in the press about what it was, but I have not ever spoken to either one of them directly.

Senator FAIRCLOTH. They never discussed it?

Mr. KENNEDY. Not with me, Senator.

Senator FAIRCLOTH. I will stop for now.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Lindsey, I take it that Ms. Schaffer felt that while she had tried to, in effect, tell the press exactly what she'd done and why, she didn't think they had given her a fair report on that; is that right?

Mr. LINDSEY. Yes, sir, that is accurate.

Senator SARBANES. What did you understand her problem to be on that issue?

Mr. LINDSEY. She had spent—again, and I actually, ultimately saw the memos that she had written to Mr. Gerth. I believe she wrote to him twice before the first story and at least once after that. And one time I think she threatened to sue The New York Times for libel. She felt like, that the stories did not reflect the time and efforts she had spent trying to lay out for them exactly what she had done as Securities Commissioner. And therefore—and basically reduced it down to less than a paragraph or two paragraphs, in which it suggested that she had been hired because she worked for Madison, which by the way, she actually I think has testified that she did one legal research on a Campobello project but that she, you know, that involved Madison, but that she certainly didn't represent Madison in any sort of significant way, but it was that sort of fuzzing of the facts that she felt like when she would explain to her what her role was with respect to that one issue, when she talked about what steps she had taken, when she tried and spent time, I understand, she called down to the Securities Commission, tried to refresh her memory as to what steps, took the time to write that, to send it to them, to talk to them, then to have it reduced to a paragraph or less in a story in which they, you know, ignored all of that, she just felt like she wasn't being treated fairly and therefore did not want to participate in that.

She certainly was concerned about doing it, to the press other than the written press because everything gets reduced to 15 second or 10 second sound bite and she certainly didn't feel like her

role or what she had done could be handled adequately in that sort of timeframe.

Senator SARBANES. As I understand it, she was also concerned because she was being followed about; is that correct?

Mr. LINDSEY. Yes. There was an incident involving Mr. Bossey and involving a Mr. Silverman who worked for NBC in which Mr. Silverman had asked, I believe, for an interview. Ms. Schaffer had indicated he wouldn't give her an interview. They showed up in Fayetteville. When she would go into a building they would get out with their cameras, following her in. When she would come out sometime later they would be there, they would follow her to her car, they would try to put the camera on her while she was walking to her car.

Mr. Bossey was there, she called her husband, her husband came down, took a picture. The reason I know Mr. Bossey was there, he took a picture of him which ran in the newspaper the next day. She felt like she was being stalked I think she was fearful not for her safety but just for being followed in and out of the buildings. She called, I believe, Mr. Silverman and tried to explain all this to Mr. Silverman and yet they continued to follow her in and out of buildings wherever she went that day.

Senator SARBANES. For that day?

Mr. LINDSEY. I think it quit after her husband came and took a picture of them doing it. I think they then left.

Mr. BEN-VENISTE. The business about The New York Times editorial and the President's handwriting, this was an editorial of December 20, 1993, it's been made available to us so that we could look at the handwriting and ask questions of you about it.

Now, you've indicated that in essence the note reflected that Ms. Bassett Schaffer had done a good job in explaining this issue before, during the campaign, and that she ought to be called upon, if she was willing, I presume, to do it again.

Mr. LINDSEY. That's correct.

Mr. BEN-VENISTE. Is that basically it?

Mr. LINDSEY. That's basically correct, yes.

Mr. BEN-VENISTE. And in that regard you recall that when you were at a basketball game in Fayetteville, you had occasion to see her husband.

Mr. LINDSEY. Yes.

Mr. BEN-VENISTE. At that time, you mentioned to him that the White House would like to see Ms. Schaffer, you know, continue to explain her involvement in connection with the Madison regulatory matter; correct?

Mr. LINDSEY. That is correct.

Mr. BEN-VENISTE. Did you at any time ask either Ms. Bassett Schaffer or her husband to shade the facts or to tell some story that wasn't accurate?

Mr. LINDSEY. No, sir. I thought her story was compelling, the role she had played.

Mr. BEN-VENISTE. If I understand you, at the point that you mentioned this to Mr. Schaffer, you don't recall whether the President was in the vicinity of the conversation or whether he was in the stands or eating a hot dog or a burrito somewhere or whatever?

Mr. LINDSEY. Correct.

Mr. BEN-VENISTE. The whole conversation, how long would you say that took?

Mr. LINDSEY. Again, less than 5 minutes. You know, she expressed to me her frustration. I think probably said to me, if I were you I wouldn't raise it with her because she is up—it upsets her.

So, I don't know whether we talked about her, and—you know, we may have done some press bashing which I might have engaged in along with him about this, I—4 or 5 minutes I would think at the most.

Mr. BEN-VENISTE. So basically most of the time was an expression by him of why he thought she might be reluctant to reinvolve herself in this—in view of the way she had been treated?

Mr. LINDSEY. That's correct.

Mr. BEN-VENISTE. Now as a follow-up to this, do you recall ever making some other effort to contact Ms. Bassett Schaffer or Mr. Schaffer?

Mr. LINDSEY. Again, Mr. Schaffer, I think, after that, and again I am not real sure on the time, sent me a copy—copies of the various memoranda that she had written to Jeff Gerth, both before and after the story.

I also had conversations with—one, maybe two, with my law partners because my law firm was trying to put together a fairly extensive chronology of all of the steps that Ms. Bassett had taken as Securities Commissioner with respect to Madison, I think on the assumption that if she didn't want to go out publicly, in a personal sort of role, that they would put out sort of a—call it a white paper for lack of a better deal, outlining exactly what she did, and when, and what steps she took, and so forth.

So I know in the months of January and February I had those discussions. Ultimately at least one newspaper, a Minneapolis paper, wrote a story with respect to this matter that I thought was fair with respect to Ms. Schaffer.

Mr. BEN-VENISTE. I would like to show you a copy of a memorandum from Beverly Bassett Schaffer to Jeff Gerth, that is dated February 25, 1992, I believe the Bates number is 0000149, to see whether, in fact, you can identify that.

Mr. LINDSEY. Yes, one is dated February 18th, it looks like, I guess. Excuse me, February 28th, and the other one is dated February 25th. I believe I—either Archie or someone sent me these two, plus I believe a third memorandum that was after Mr. Gerth's article, that she sent to him. But these, I believe, were her attempts with Mr. Gerth at the time to try to walk him through what she had done and the decisions she made as Securities Commissioner with respect to Madison.

Mr. BEN-VENISTE. Mr. Chairman, in order to save time, and not to go through this in great detail although it is an obviously carefully considered memorandum, which goes into considerable detail, I would ask whether it would be appropriate to make this a part of our records.

The CHAIRMAN. Certainly. So ordered. Both memorandums will be included in the record.

Mr. BEN-VENISTE. Unfortunately, we don't have available the one which you refer to as the third one but we do have the memorandum of the 25th and of the 28th.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me see, Mr. Lindsey, if I can go over quickly with you something. There came a time when this editorial dated December 20th came into your possession. It was sent to you and who else?

Mr. LINDSEY. Mr. McLarty.

The CHAIRMAN. Mr. McLarty, does the President often do that?

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. What did he say, we'd been given to believe he said this is important to be on top of, period, do you recall that?

Mr. LINDSEY. I believe that's correct, yes.

The CHAIRMAN. Bassett did a good job in campaign on this dash dash, do you recall that?

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. Can she now?

Mr. LINDSEY. The word I quibbled with from looking at the original and looking at what I saw was the word "can." It could well be "can," it could be "will." The President's handwriting, frankly, is not that great.

The CHAIRMAN. That's one of the reasons we are asking for the documents. But either way, "can" or "will." Mr. Kennedy, with your handwriting I can understand why that would be something to laugh at.

Mr. LINDSEY. I did say his was slightly better than Mr. Kennedy's.

The CHAIRMAN. He said this is important.

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. He didn't just send this to you to take a look at, he sent it to Mr. McLarty and yourself and he said stay on top of it; right?

Mr. LINDSEY. Yes, sir. Was that a question?

The CHAIRMAN. The implication was clear, sent it to you and to Mack, stay on top of this, it is important. Now what lengths, if any, did you go to to stay on top of it? Was it just this casual meeting at the ball game?

Mr. LINDSEY. No, sir. As I say, even after the casual meeting at the ball game, I had conversations with——

The CHAIRMAN. What about prior to the ball game?

Mr. LINDSEY. I don't believe so. I mean, this is the 20th, you know. I don't know when I went home for Christmas.

The CHAIRMAN. Did you know that the Schaffers were going to be at the ball game?

Mr. LINDSEY. No, not conclusively.

The CHAIRMAN. You didn't know conclusively or you didn't know?

Mr. LINDSEY. Well, it's a ball game in Fayetteville.

The CHAIRMAN. Yes. You were in where, Little Rock?

Mr. LINDSEY. Yes.

The CHAIRMAN. How far is Little Rock from Fayetteville?

Mr. LINDSEY. The Schaffers lived in Fayetteville, so they——

The CHAIRMAN. But you and the President were in Little Rock?

Mr. LINDSEY. That's correct.

The CHAIRMAN. My question is, and I don't know how far is it from Little Rock to Fayetteville?

Mr. LINDSEY. I'm guessing 120 to 140 miles.

The CHAIRMAN. 140 miles? And would you ordinarily fly?

Mr. LINDSEY. Yes.

The CHAIRMAN. Now, you didn't know whether the Schaffers were going to be at this ball game?

Mr. LINDSEY. No, I did not know they were going to be there.

The CHAIRMAN. Did you know that you were going to be guests for any period of time, you and the President would be afforded the opportunity to be in the Tyson box?

Mr. LINDSEY. Before I got there I found out.

The CHAIRMAN. Did you have any arrangements made?

Mr. LINDSEY. Again, when the President goes there, they would have made arrangements as to where we sat, whether it was the president of the university's box, somebody else's box. All of that would have been prearranged, but I'm not sure I would have had knowledge of it before we actually got up there and was escorted into whatever box we were in.

The CHAIRMAN. So there was no particular sense of urgency to attend this game, was there? In other words, there wasn't an urgency that you meet the Schaffers, was there? You didn't know that you were going to meet them?

Mr. LINDSEY. Meeting the Schaffers had nothing to do with going to the ball game.

The CHAIRMAN. That was coincidental?

Mr. LINDSEY. Yes, sir.

The CHAIRMAN. Did you fly from Little Rock to Fayetteville?

Mr. LINDSEY. I had never driven with the President from Little Rock to Fayetteville so if we were in Little Rock and went to Fayetteville, we flew. Yes, sir, I do actually remember we flew.

The CHAIRMAN. Where did you fly to?

Mr. LINDSEY. We would either have flown to Drake Field in Fayetteville or to Springdale.

The CHAIRMAN. Suppose I told you that that evening you had snow and fog and conditions that prevented you from flying into Fayetteville or to the adjacent fields, would that refresh your recollection?

Mr. LINDSEY. It refreshes my memory that we probably—the adjacent field, I don't remember whether we flew—are you suggesting that we flew into Rogers as opposed to Springdale?

The CHAIRMAN. Yes.

Mr. LINDSEY. That's certainly possible.

The CHAIRMAN. Because of weather conditions.

Mr. LINDSEY. If I remember right, it was snowy.

The CHAIRMAN. That took you further away than going into Fayetteville, the airport that serves Fayetteville; is that correct?

Mr. LINDSEY. It is probably 30 minutes from Rogers versus 15 minutes from the Fayetteville airport. Maybe slightly longer from Rogers but not much longer.

The CHAIRMAN. How many miles from Rogers?

Mr. LINDSEY. Probably less than 15 miles from Rogers. Fayetteville, Springdale, and Rogers are all in a corridor; Fayetteville at the southern end of the corridor, Rogers—

The CHAIRMAN. Then you drove from Rogers to—

Mr. LINDSEY. That's correct, in a motorcade.

The CHAIRMAN. And you wound up in the Tyson box. Doesn't Mr. Schaffer—did he work for Tyson?

Mr. LINDSEY. Yes, he does.

The CHAIRMAN. So could you be fairly safe to assume he was going to be at that game?

Mr. LINDSEY. Again, I don't think I knew until we got there that we were staying in the Tyson box.

The CHAIRMAN. So it was just coincidental?

Mr. LINDSEY. I'm sorry, that I saw them there?

The CHAIRMAN. Yes.

Mr. LINDSEY. I did not go there with the intention of having a conversation with Beverly or Archie.

The CHAIRMAN. Do you see why the Committee is interested in this point? Is it a stretch to suggest that after this memo or this jotting of the President, this direction—

Mr. LINDSEY. Senator, let me—

The CHAIRMAN. Let me just finish and then you can answer.

Mr. LINDSEY. I'm sorry, I'm sorry.

The CHAIRMAN. Given that this note by the President, this is important to be on top of, Bassett did a good job in the campaign on this, can she now, or will she now, and that this was sent to you and to the Chief of Staff, is it unreasonable for us to say this was an attempt to make contact and to stay on top of this? I mean, do you think that's unreasonable?

Mr. LINDSEY. I don't think it's the facts. I think that if I had called Beverly Schaffer up on the 21st and had a conversation with her, that would not be improper. If I had, you know—I do not believe having—I don't know what the point of this is. I spoke with Beverly—I spoke with Archie Schaffer.

The CHAIRMAN. You don't understand the point of the question?

Mr. LINDSEY. I don't understand what the point—yes, sir, I don't understand. I don't understand my response to it is, so what.

The CHAIRMAN. If I have to explain that to you, Mr. Lindsey, and talk about the manner in which the White House has gone to withhold this and then the concern which was expressed at this point in time in the President's own message, then there's no use—

Mr. LINDSEY. Senator—

The CHAIRMAN. No, there's no use. I just wanted to attempt to put this in the framework so that you would not think that we're just going on, and I'm going to yield to Senator Bond because these are the circumstances under which we learn about this information. And I think reasonable people would say, was that a meeting set up to give you and/or the President the opportunity to meet with the Schaffers and others to take care of this, was it part of staying on top of this? So that's something that I would ask.

Mr. LINDSEY. Take care of what, Senator?

The CHAIRMAN. This is what the President said, this is important to stay on top of, Bassett did a good job on this, can she now.

Mr. LINDSEY. That's right, Senator. There is an editorial that is written—may I finish, please? I have read some of your responses to various editorials. It is entirely appropriate, if there is an editorial that mischaracterizes somebody's role in something, for someone who knows the facts to say we can't let this stay out there

with this mischaracterization, can we get on top of this, can we try to get the facts out.

There is simply nothing improper about that, and the so what is I'm having trouble, and I apologize, it must be me, as to what the significance of this is.

The CHAIRMAN. OK. Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Mr. Kennedy, let me go back over an area where I'm not clear. You were managing partner at the Rose Law Firm in 1992?

Mr. KENNEDY. Good afternoon, Senator. My formal title was Chief Operating Officer but—

Senator BOND. Chief Operating Officer.

Mr. KENNEDY. —managing partner is fine.

Senator BOND. OK, sorry. Just needed to get that straight.

Now, your responsibility as a COO included the administrative details, is that correct, like handling the files, handling the work of the firm as opposed—the administrative work of the firm as opposed to solely the legal practice?

Mr. KENNEDY. That's correct.

Senator BOND. Were you responsible for the maintenance of the files? Is that under your—

Mr. KENNEDY. I tried to make the trains run on time, Senator.

Senator BOND. OK. Were you aware that Mr. Foster had requested Mr. Massey to produce the files in the instance where Mr. Foster went to Mr. Massey and said please give me the files, Mr. Massey said I'll make you copies? Were you aware of that request?

Mr. KENNEDY. I was aware, Senator, that Vince was going to make a response on behalf of the law firm with regard to the Madison issues that had come up in the campaign. I did not know, didn't have any independent knowledge at the time that he had talked to Rick. Doesn't surprise me that he did.

Senator BOND. So the preparation by Mr. Foster was—essentially within the purview of your responsibility as COO, you did not know that he had taken copies of the files?

Mr. KENNEDY. I am going to give you a little bit of a longer answer, if I may, because I think the background is important.

Vince was one of two people at the firm that were dealing with campaign issues as they came up during the campaign, and that's—the Madison issues came up in the campaign, issues regarding the firm's representation came up during the campaign, and he was responding on behalf of the firm.

Now several times this morning people have said that Vince took the files. I don't know if Vince took them or not. If he did take them, I don't know when he took them. All I know is, at the time, that Vince gathered the files so that he could respond to these issues on behalf of the firm.

Senator BOND. Mr. Chairman, my time is up. I will come back to that.

The CHAIRMAN. If you want to pursue that, I will give you additional time.

Senator BOND. Let me finish up with this line of questioning. I have a couple of other lines to get into but let me finish up this.

When did you become aware that files—either copies or files from the Rose Law Firm had gone to the campaign or to people outside of the Rose Law Firm who had connections to the campaign?

Mr. KENNEDY. Senator, which files are we talking about?

Senator BOND. The Madison Guaranty/Whitewater files.

Mr. KENNEDY. There's been some confusion as to—and I would like to take a moment to simply see if I can clear it up. There was a group of files which related to the firm's Madison representation. There was another group of files which related to—and this is what I tried to address this morning but I'm told I didn't do a very good job—there was another group of files that related to Whitewater the corporation and Whitewater the real estate development which I had received from Mrs. Clinton in 1991. The reference in the notes, as I testified this morning, was to the Whitewater corporate records and the Whitewater real estate records.

Senator BOND. Now, you said it was a vacuum. It wasn't a Dust Buster or Hoover, there was an absence?

Mr. KENNEDY. That's correct, an informational vacuum.

Senator BOND. What types of information were missing from those files?

Mr. KENNEDY. Take your pick, Senator. They were a shambles. No stock minute book, no minutes, no stock certificates. Any of the normal corporate records that you would expect to find were not in existence. Incomplete copies of documents, half portions of documents. It was a mess, and that's what I was referring to.

Senator BOND. Those files had been the responsibility—are you saying those files had been the responsibility of Mrs. Clinton?

Mr. KENNEDY. They were at one time in Mrs. Clinton's possession, yes, sir.

Senator BOND. And who was the lead partner on that Whitewater—

Mr. KENNEDY. This representation?

Senator BOND. Yes.

Mr. KENNEDY. Me, Senator.

Senator BOND. So under your care, there were gross absences or missing elements in those files?

Mr. KENNEDY. No, that's the condition they were in when—

Senator BOND. Who was responsible for that condition?

Mr. KENNEDY. I can't answer that, Senator. That's—

Senator BOND. Who was responsible for the files before they came in their sorry condition to you?

Mr. KENNEDY. Well, they came to me from Mrs. Clinton, start there. When they were given to me by her, she owned up to the fact that they were a mess, and that's what I found to be true, OK?

Now why they were incomplete, on whose watch, I can't address, I don't know. I have heard from press reports that there is a dispute about those records. The McDougals say they were delivered at one point; my understanding is the President and First Lady said they weren't.

I can testify of my own personal knowledge that they were a mess, what I received from Mrs. Clinton. Again for clarity, this is the Whitewater corporate records and the records that were in Mrs. Clinton's possession as they related to the real estate development.

Senator BOND. Now with respect to the Madison Guaranty files, were those, in fact, the ones that Mr. Massey had access to?

Mr. KENNEDY. Well, as I understand things, Senator—and I would not have known this at the time because I wouldn't have had any reason to—Rick had a set of files regarding his representation, and I believe Mrs. Clinton had a set of files with regard to her representation. And there—

Senator BOND. Of Madison?

Mr. KENNEDY. Of Madison. And there may have been, Senator, other attorneys in the firm that had files relating to representation of Madison.

Senator BOND. When did you become aware some of those files had left the firm?

Mr. KENNEDY. I didn't become aware of that until late in November 1993—well, let me—I need to put some content in that.

I didn't become aware that the files—and I don't know if they're originals or copies—had left the firm until 1994, primarily from press reports, I believe, but I had a conversation with Mr. Kendall in November 1993, regarding returning files to the law firm, OK? And I surmise that those files were Madison files that had been removed.

Senator BOND. And as a COO, do you have ultimate responsibility for insuring that files are not released without the approval of the client?

Mr. KENNEDY. Senator, in an abstract sense, that's correct, absolutely. But on a day-to-day basis, there is no way that I or Mr. Clark, having taken my place, can do that. You just can't do that when you have a firm full of 50 or 60 lawyers. We did not have a reporting mechanism of any kind where someone said so-and-so client wants copies of or wants their files back. We just didn't operate that way.

Senator BOND. But it would only be to the client, would it not, that you released those files?

Mr. KENNEDY. Yes, sir, unless—

Senator BOND. As you said, unless you had the express approval of the client.

Mr. KENNEDY. Yes. Of course, Senator, without quibbling with you, as you know from your own experience, there are other ways files might go out, law enforcement agencies and whatnot, but the fact is you would not ordinarily do it unless you had the client's consent.

Senator BOND. Well, it would seem to me, based on my limited experience, that files would not go out to someone other than the client without having the approval of what we used to call the managing partner or the COO.

Mr. KENNEDY. Senator, I stand by my testimony. The way we operated it would be impossible, and I think I could say that, even today, to know for sure every time a client wanted copies of information or the files themselves, we just—

Senator BOND. Or somebody other than a client. That's what I'm asking you about. If it were not the client having files go out—

Mr. KENNEDY. If it were not the client, then I would expect that that would come to my attention.

Senator BOND. I believe I worked for a law firm that may have used the same professional liability insurer as the Rose Law Firm, and I can tell you that I had been advised on occasion that no files can go out of the law firm without the express approval of the client. They had not so advised you?

Mr. KENNEDY. As I said, Senator, the answer to your question is that the files could not leave the law firm at this point in time or now willy-nilly, absolutely. It would require the client's consent or other extenuating circumstances for the files to leave the firm.

Senator BOND. Finally, who was the client?

Mr. KENNEDY. At which point in time?

Senator BOND. In 1992.

Mr. KENNEDY. One second.

Senator there's a complicated answer to that, as you know.

Senator BOND. Isn't it the RTC?

Mr. KENNEDY. Yes, sir.

Senator BOND. You didn't receive any approval from the RTC for those files to go to persons outside the law firm?

Mr. KENNEDY. None came to me, Senator, but I wish to state again I don't know for sure that those files did go to persons other than the client.

Senator BOND. We got them back from somebody who was not the client.

Mr. KENNEDY. I don't know exactly what happened there, Senator. I don't know if they were originals or copies. I don't know.

Senator BOND. Goes just the same for a copy, doesn't it, as the original? You don't let copies of files go out to somebody who isn't the client, do you?

Mr. KENNEDY. As a general matter, that's true.

Senator BOND. I think it's more than a general matter.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Sarbanes, I thank you so that we could finish that line, and we did go well over our time.

Senator Sarbanes.

Senator SARBANES. Mr. Lindsey, if my recollection serves me right, just from following the press, the President is a fan of the University of Arkansas basketball team, is he not?

Mr. LINDSEY. That he is, yes, sir.

Senator SARBANES. Going to a basketball game is something you would expect the President to do?

Mr. LINDSEY. If we are in Arkansas, or even if we are not in Arkansas at times, and the Razorbacks are playing, he would try to go, yes.

Senator SARBANES. I guess the suggestion here was that attending this basketball game was a disguise for meeting with either Mr. Schaffer or Mrs. Schaffer or both. Is there any basis to that?

Mr. LINDSEY. Absolutely none.

Senator SARBANES. In fact, you could have gotten in touch with them without going to the basketball game, couldn't you?

Mr. LINDSEY. Absolutely. And I spoke to Mr. Schaffer on occasion after this about this matter.

Senator SARBANES. In fact, there was nothing wrong with you getting in touch with them, was there?

Mr. LINDSEY. Not in my judgment, no, sir.

Senator SARBANES. I take it the purpose of it was to see if Ms. Schaffer would be willing, in effect, to say what had taken place just as she did during the campaign; is that correct?

Mr. LINDSEY. Yes, sir. And again, if—the memorandums, she went to some length to detail the steps she took and, you know, again, the records of the State Securities Commissioner are there for anyone to look at, and I would just defy anyone to take an objective look at those records and say that she did not do everything within her authority and power to properly manage and regulate Madison Guaranty. I just defy them. I don't believe that they can find a basis for claiming that she did not do what a good regulator should do.

Mr. BEN-VENISTE. Thank you, Senator.

With respect to the Whitewater files, Mr. Kennedy, you're almost there, in my view, in terms of clarifying this distinction.

Mr. KENNEDY. I'm trying, Mr. Ben-Veniste.

Mr. BEN-VENISTE. The Whitewater files that were provided to you by Mrs. Clinton in when, late 1991, did you say?

Mr. KENNEDY. Actually early 1991.

Mr. BEN-VENISTE. Early 1991. Do you know whether those files were files that Mrs. Clinton had maintained herself for some period of time, or whether those were files that she had received from some other source?

Mr. KENNEDY. Well, Mr. Ben-Veniste, I don't think that I delved deeply into where these files had come from, but I got the distinct impression that Hillary was not generally familiar with them other than the fact that they were in a shambles, and I got the impression that she had not maintained those files.

Mr. BEN-VENISTE. It is our information that the files were received from Mrs. Clinton at some point from an accountant or bookkeeper who had been employed by Mr. McDougal to maintain those files or to work on them.

Mr. KENNEDY. I believe that's correct. There's also an assertion out, which has been reported in the press, that the McDougals claim that they delivered records to Mrs. Clinton at some point in the mid-1980's.

Mr. BEN-VENISTE. In looking at the files, were these business records as compared with legal files?

Mr. KENNEDY. A mishmash of both.

Mr. BEN-VENISTE. With respect to the Madison Guaranty files, Mr. Massey testified that the files he provided to Mr. Foster, which then made their way as copies to Mr. Hubbell, which were then turned over to Mr. Kendall, and then when Mr. Kendall recognized them as being Rose Law Firm files, returned them to the Rose Law Firm, those files did not deal with Whitewater, did they?

Mr. KENNEDY. No, sir.

Mr. BEN-VENISTE. Those were files that Mr. Massey has testified were maintained by him in connection with the securities matter that he had researched and had written about and maintained in connection with the Rose Firm's representation of Madison?

Mr. KENNEDY. That's correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. So that those files which made that circle were in the possession of someone, to the best of your knowledge and our

present knowledge, were in the possession of a partner of the Rose Law Firm up until the point that Mr. Hubbell turned them over to Mr. Kendall as a part of a larger body of documents that he provided to Mr. Kendall, and then they were in turn returned by Mr. Kendall to the firm?

Mr. KENNEDY. That's my understanding, Mr. Ben-Veniste. I have to say, I don't have much independent knowledge about this circle, but that's my understanding of what's happened.

Mr. BEN-VENISTE. Those files, from a substantive point of view, have been reviewed by us, and again are completely unremarkable in terms of information that would suggest any impropriety, so far as we have been able to establish at this point. Mr. Massey has been very clear in his testimony about what those files comprised.

Mr. KENNEDY. That's my understanding, Senator. I mean, Mr. Ben-Veniste. Pardon me.

Mr. BEN-VENISTE. Finally, Mr. Massey confirmed that he compared the files that were returned to his original files which he had maintained all along and which were available to any appropriate agency who had the authority to seek them. His testimony was that the files that were returned were a complete duplicate set of the original files which he continued to have in his possession.

Mr. KENNEDY. That's what he testified to, yes, sir.

Mr. BEN-VENISTE. I would yield back the balance of our time.

Senator BOND. Thank you, Mr. Chairman.

To pick up, Mr. Lindsey, you were certainly present there and involved in many different ways. I asked Mr. Kennedy several questions about the files. Did you know at the time, or do you now know, how the Madison Guaranty files or the copies thereof left the Rose Law Firm and wound up in this Washington transfer to Mr. Kendall? Do you know how they got out?

Mr. LINDSEY. I do not know how they got out of the Rose Law Firm. I do know something about if they were among the files at the campaign, how they wound up with Mr. Hubbell, and I guess—I think I knew Mr. Hubbell had ultimately returned them to Mr. Kendall. And then I heard during the hearing—

Senator BOND. Excuse me?

Mr. LINDSEY. —I heard during the hearing about how Mr. Kendall sent them back to the Rose Law Firm, but I do not know how they went from—I did not—first, I did not know there were Madison files in there. I just knew that whatever information the campaign had went to Mr. Hubbell, who stored them for a while, who ultimately gave them to Mr. Kendall, who returned them to the Rose Law Firm.

Senator BOND. Mr. Ben-Veniste had asked whether they were always in the control of a Rose Law Firm partner. If they were—the files were at the campaign, were they in the control of a Rose Law Firm partner?

Mr. LINDSEY. Well, again, I don't know exactly where these files were. If they were part of the files that were in Ms. Wright's possession, I do not believe they all the time would have been in the control of a Rose Law Firm partner.

Senator BOND. Mr. Hubbell, when he was in Washington in his position, was no longer a partner of the Rose Law Firm; correct?

Mr. LINDSEY. Correct. At the point Mr. Hubbell picked up the files from Ms. Wright, if in fact these files were in that group, he was a partner in the Rose Firm but he subsequently withdrew.

Senator BOND. Mr. Kennedy, as the COO, is it not clear that even though a person had been a partner of the law firm, that person once he is no longer a partner does not have a right to have copies of the files without the client's permission; is that correct?

Mr. KENNEDY. Senator, I would not go so far as to say that. It would depend on the facts and circumstances. I want to stress, I'm not trying in any way, shape or form to quibble with you. But for example, as long as they're—if—undertook a representation and the originals remained with the firm, it's possible that it would be OK to take copies as long as originals remained with the firm.

Senator BOND. I think you will find that's not acceptable. We're not going to argue that here, but I think that—I do not believe that that is permissible or acceptable. That is another—we won't get into that. You've stated your views.

Let me ask you about another area. Were you aware that, in February 1992, a summary of the billing records of Mrs. Clinton mysteriously now turned up in the White House? We have the summary page printed in February 1992, with other records. Were you aware at the time or of the circumstances of the printing-out of those records?

Mr. KENNEDY. No, sir, I was not.

Senator BOND. Were you aware that these billing records had been delivered to somebody outside the Rose Law Firm?

Mr. KENNEDY. At the time, no, sir, I was not. And I don't know if they ever have been.

Senator BOND. Mr. Lindsey, were you aware of the printing of the summary of the billing records?

Mr. LINDSEY. No, sir.

Senator BOND. Or do you know when or how they had been delivered to someone outside the Rose Law Firm?

Mr. LINDSEY. No, sir. You said when or how, I would add or if.

Senator BOND. So you don't know that somehow they got to us mysteriously, and we are trying to track down that mystery. Something happened. Maybe it was supernatural transmogrification, and that is unlikely but in this inquiry, nothing is impossible.

Mr. Eggleston, you sat in on GAO interviews of the White House staff involved in Travelgate, did you not?

Mr. EGGLESTON. Yes, sir.

Senator BOND. Did you sit in on the interviews of the Office of Professional Review?

Mr. EGGLESTON. When I said yes, sir, to the first one, I sat in on some interviews of GAO, probably most, and some interviews of OPR, probably most. I don't know that I could tell you, Senator, that I sat in on all of them.

Senator BOND. How about the FBI interviews?

Mr. EGGLESTON. No.

Senator BOND. You did not sit in on those. Were you present when Mr. Watkins was interviewed?

Mr. EGGLESTON. I was present when—I remember Mr. Watkins being interviewed at the GAO. I do not remember specifically whether I was there when he was interviewed by the OPR but it's

perfectly possible. I have read in the paper that he was interviewed by the FBI on April 10, 1993, or something around that time. I know I didn't attend that, I was not at the White House yet.

Senator BOND. Were you aware of the interviews—did you sit in on any of the interviews of Mr. Kennedy?

Mr. EGGLESTON. I think I sat in on the—it is hard for me to remember any specific individual I sat in on. I think I sat in on Mr. Kennedy's GAO interview.

Senator BOND. Mr. Nussbaum?

Mr. EGGLESTON. He may have been—I just don't remember. This process, Senator Bond, was already well underway by the time that I arrived at the White House. I came in mid-to-late September and the GAO interviews had already begun. I just don't remember whether he had already been interviewed or not.

Senator BOND. Did you see records of any of the interviews of those which you did not sit in?

Mr. EGGLESTON. I don't think so.

Senator BOND. But you sat in on some, so you had a pretty good sense of what was being said?

Mr. EGGLESTON. Yes. And more than some. I sat in on most, and possibly all. I just can't quite say all because I'm not sure what happened and I haven't gone back to look.

Senator BOND. Mr. Foster, or—well, you would not have—

Mr. EGGLESTON. Mr. Foster was—

Senator SARBANES. Mr. Chairman, is this with respect to Travelgate?

Senator BOND. I am trying to establish what the basis of this—of these discussions and advice that Mr. Eggleston gave was.

The CHAIRMAN. OK. Continue.

Senator SARBANES. Mr. Clinger is doing Travelgate and he is going to be doing it tomorrow, isn't he?

The CHAIRMAN. I think for limited purposes I am going to allow the Senator to continue. We are not getting into the whole area. We are getting into those matters that Mr. Eggleston may know about.

Senator BOND. I will conclude this with just a couple of questions, and I certainly don't want to interfere with Mr. Clinger's area. But Mr. Eggleston, so you did know what these people in the White House had said about Travelgate?

Mr. EGGLESTON. If they said it in a GAO interview, it's likely that I did.

Senator BOND. You were not aware at the time of this now famous Watkins' memo, undated memo, stating his views on it?

Mr. EGGLESTON. That's correct. I learned about that in the newspaper last week, the week before. I've lost track of weeks. Whenever it appeared in the newspaper, that's when I learned about it.

Senator BOND. And did you draft Mrs. Clinton's response to the GAO?

Mr. EGGLESTON. Yes.

Senator BOND. Did you discuss with her any of the information relating to what had been elicited in the aforementioned interviews?

Mr. EGGLESTON. I don't really remember. I remember discussing with her the answers that she was going to give to the questions.

Senator BOND. So you were able to insure that her answers would be consistent with what was then known by the investigators looking at the Travelgate affair prior to the time that she submitted those written responses?

Mr. EGGLESTON. I knew, because I'd sat in on most of the interviews, what other people had said. Of course, this was not the first investigation. The White House Management Report had already done it. I got her answers by giving her the questions and asking her what the answers were to the questions.

Senator BOND. But you knew everything—at that time you knew everything except what Mr. Watkins put in this now—this undated memo, which outlines his position, and the answers that Mrs. Clinton gave in that GAO response were consistent with what had been stated previously by other witnesses who testified in your presence before the GAO?

Mr. EGGLESTON. Generally consistent. Even in his GAO interview, Mr. Watkins was, as I recall at least, more—sort of had a greater role for Mrs. Clinton than she recalled. In fact, I remember drafting the specific answer, because the GAO had posed a particular question and had sort of excerpted from Mr. Watkins' GAO interview, and I asked her about that and said—because they said—one of the questions was do you remember that, is that accurate, is Mr. Watkins accurately summarizing it. And she said Neil, I remember the circumstance of Mr. Watkins calling me, I was getting dressed for a function or the like. I just don't remember it in this much detail, which is the answer that we put down. In fact, they were not even entirely consistent at the time but they were what her recollection was, as related to me, about the events.

Senator BOND. Thank you very much, Mr. Eggleston.

Thank you, Mr. Chairman. I appreciate your indulgence.

And just to add a little more reading material, I look forward to reading the Anthony Lewis' article that our Ranking Member presented, and I would just offer The Wall Street Journal editorial of January 12, 1996, so that another view of editorial comments may also be included in the record.

The CHAIRMAN. It will be included in the record.

Senator SARBANES. Mr. Chairman, while we're at this, then, let's put in Tom Oliphant's column.

The CHAIRMAN. Fine. Tom Oliphant's column.

Senator BOND. For each one they offer, I'm sure we can offer one, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

The Minority has kindly consented to permit Mr. Chertoff to continue so we could fulfill our line of questioning and hopefully conclude this matter with these witnesses today at this time.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Kennedy and Mr. Lindsey, I would like you to turn to the typed version of the notes of the November 5th meeting, which are at S 12535.

Mr. EGGLESTON. Mr. Chertoff, I'm sorry to do this, but Mr. Bond asked me whether I sat in on any FBI interviews. I know I didn't sit in on Mr. Watkins. I didn't remember any others. I think I answered a blanket no, and I'm sitting here thinking to myself, I

don't remember about other FBI but I know I didn't sit in on Mr. Watkins.

When I answered you, Senator Bond, I was thinking about the Watkins' interview and I think I was interpreting your question as being a Watkins' question. I did not sit in on the Watkins' interview. I just really don't remember about the others, but I didn't want to sit here and leave that record what I think was probably slightly inaccurate.

Senator BOND. But you did state, I recall that you did sit in on the Watkins' GAO interview?

Mr. EGGLESTON. Yes, I did, I did. But it was the issue—I think I blanketly told you that I hadn't sat in on any FBI interviews. I don't really remember about that. I'm certain I did not sit in on his FBI interview, Watkins' FBI interview, particularly if it was August 10 because I wasn't at the White House then.

Senator BOND. Thank you, Mr. Eggleston.

Mr. CHERTOFF. Mr. Kennedy, I want to direct your attention to where it says 1978, and I want you to follow along with me in reading this. It says—this is S 12535.

Mr. KENNEDY. Yes, sir, I'm there, Mr. Chertoff.

Mr. CHERTOFF. It's up on the board. It says, "AG plus HRC new lawyer at RLF." What that means is Attorney General and Bill Clinton was then Attorney General; right?

Mr. KENNEDY. Yes, sir, that's correct.

Mr. CHERTOFF. And Hillary Rodham Clinton was a new lawyer at the Rose Law Firm; right?

Mr. KENNEDY. That's correct.

Mr. CHERTOFF. It goes on, "McDougal may have approached Clinton—few things that could do. Buy—subdivide—sell lots and get rich." Is that a discussion of your understanding—and when I say "you," I mean, all of you at the November 5th meeting—of the beginnings of the Whitewater Development investment?

Mr. KENNEDY. Mr. Chertoff, I believe that at this point in the November 5th meeting, Mr. Lyons is speaking now, and he has gone back to providing background, historical background.

Mr. CHERTOFF. So this is Lyons giving you-all historical background on the beginning of the Whitewater investment; right? Is that right, Mr. Kennedy?

Mr. KENNEDY. I believe that's correct, Mr. Chertoff.

Mr. LINDSEY. I'm sorry, can I also respond?

Mr. CHERTOFF. I'm still with Mr. Kennedy.

Mr. LINDSEY. OK, I'm sorry.

Mr. CHERTOFF. Was Mr. Lyons someone that had conducted some examination or investigation for the campaign, and afterwards, on the beginnings of that investment?

Mr. KENNEDY. Mr. Chertoff, he had prepared—he had worked on Whitewater issues for the campaign. You put a tag in there, after the campaign. I don't know about that.

Mr. CHERTOFF. But during the campaign?

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. You understood him to be knowledgeable about Whitewater as much as any of you sitting in the meeting; right?

Mr. KENNEDY. Well, without the qualifier, let's just say he was knowledgeable.

Mr. CHERTOFF. At this point in the meeting, he was now presenting his understanding of the facts to Mr. Kendall and to everybody else; right?

Mr. KENNEDY. I believe at this point he had started to talk, yes.

Mr. CHERTOFF. So this portion that I have read says McDougal may have approached Clinton with some propositions of things that they could do together from an investment standpoint, and they talked about buying, subdividing, selling lots, and getting rich. That related to the notion of buying the Whitewater property, subdividing and selling the lots off and making a lot of money; right?

Mr. KENNEDY. With the caveat, I want to focus on the word "may," Mr. Chertoff. I believe what Mr. Lyons was saying at the time is this is how it may have happened.

Mr. CHERTOFF. This is based upon his examination of the facts during the campaign?

Mr. KENNEDY. Let's just say it was based on his knowledge, his understanding.

Mr. CHERTOFF. The next line says, "No cash—100 percent leverage." Now, 100 percent leverage, what does that mean?

Mr. KENNEDY. It means that you do something with borrowed money.

Mr. CHERTOFF. It means you don't put any money out of your own pocket into the investment, no cash, it means you get someone else to put up all of the money that is going to represent your stake in an investment; right?

Mr. KENNEDY. Well, it doesn't necessarily mean that, Mr. Chertoff. It could mean the absence of cash, but you could have equity coming from other sources.

Mr. CHERTOFF. But what it means, when someone says no cash, 100 percent leverage, what it means is that person is not putting any cash into the deal, they are going to borrow—of their own, they are going to borrow the money and get 100 percent leverage; right?

Mr. KENNEDY. Mr. Chertoff, I would like to continue to give you my answer, which is, I take it this way, there is—you're almost completely right, but it is possible to use 100 percent leverage and still have equity in something but put no cash up.

Mr. CHERTOFF. Yeah, and in that situation what that means is you get the stock but the money that's used to invest to get you the stock is borrowed from somebody else; right?

Mr. KENNEDY. It can mean that with the qualifier that I just put on it.

Mr. CHERTOFF. In this case, when you wrote down, "No cash—100 percent leverage," Mr. Lyons was telling you that his understanding was that the Clintons had not put any cash into Whitewater; right, at the beginning in 1978?

Mr. KENNEDY. No, Mr. Chertoff. What these lines represent is Mr. Lyons saying this is how it may have happened. This group, this group of notes talks about, this may have been the pitch that McDougal made to the then-Governor.

Mr. CHERTOFF. So it may have been the way it happened, that McDougal said in substance, look, we can buy these lots, we can subdivide them, we can get rich. You won't put up any money. We will borrow all the money that reflects your part of the investment

and you'll have 100 percent leverage. That's what Mr. Lyons says is the way it may have been?

Mr. KENNEDY. Again, I want to stress the word "may." He's saying this may have been the pitch.

Mr. CHERTOFF. You will agree with me that leverage is when you borrow the money or you use someone else's money as opposed to your own investment, out of your own pocket?

Mr. KENNEDY. Generally so, yes.

Mr. CHERTOFF. When Mr. Lyons was having this discussion, I mean you weren't at this point just sitting around chewing the fat about what might have happened; you were getting this information out because it was necessary to give Mr. Kendall the facts surrounding the Whitewater investment so he could begin to represent the Clintons in this investigation; right?

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. When Mr. Lyons said this is the way it may have been, did anybody ask well, have we checked to find out?

Mr. KENNEDY. Check with regard to what, Mr. Chertoff?

Mr. CHERTOFF. Did someone say to Mr. Lyons, well, you are saying this may have been the pitch. Did anybody ask Mr. Lyons whether he had checked with the Clintons to see if, in fact, that was the pitch?

Mr. KENNEDY. No, sir, I don't recall anybody posing that question to Mr. Lyons.

Mr. CHERTOFF. Did anyone challenge Mr. Lyons' account of the way it may have begun in 1978?

Mr. KENNEDY. I don't believe anybody had reason to.

Mr. CHERTOFF. So no one had reason to doubt that the initial pitch that was made to the Clintons by Mr. McDougal involved no cash, 100 percent leverage; right?

Mr. KENNEDY. Mr. Chertoff, you keep saying this as if it's a matter of fact, and your questions indicate that. I need to emphasize the word "may" in these notes. Mr. Lyons was not saying this is what happened. He says this is what may have happened.

Mr. CHERTOFF. Wasn't Mr. Lyons the person who in the campaign had the assignment of finding out what the facts were?

Mr. KENNEDY. I cannot tell you independently, in other words things that I know from my own personal involvement, exactly what his task was. Obviously, my understanding is that he was tasked to prepare a response on behalf of the campaign to the Whitewater issues that were swirling around in the 1992 Presidential campaign. I do not know exactly what the content of that assignment was. I'm sorry, I do not.

Mr. CHERTOFF. But I mean, Mr. Lyons came for a purpose to give facts to the lawyer. Didn't you think in this—when you were sitting in that meeting, that Mr. Lyons had, in the course of his investigations, asked the Clintons how this got started?

Mr. KENNEDY. I have no idea, Mr. Chertoff.

Mr. CHERTOFF. Did anyone say in the meeting—you're telling us in the meeting that it may have—Mr. Lyons said well, it may have started this way. Did anyone at the meeting say well, did you ever check with the Clintons and find out what they remember?

Mr. KENNEDY. No, sir, nobody to my—to the absolute best of my memory, nobody posed such a question to Mr. Lyons.

Mr. CHERTOFF. In fact Mr. Lyons went on to describe, in the course of the meeting, the fact that the Clintons had borrowed the money from a bank to invest in their initial share of this White-water deal; right?

Mr. KENNEDY. Yes, sir, along with the McDougals.

Mr. CHERTOFF. The Clintons had borrowed 100 percent; right?

Mr. KENNEDY. Mr. Chertoff, I believe that's correct, but there are, as the notes reflect later on, there was, you know, some work done prior to the time they got into it. I don't know if it was treated back then as equity because of the site work that had been done. I just don't know.

Mr. CHERTOFF. But this discussion here in terms of what Mr. Lyons was saying to the assembled group was that the deal was supposed to be, may have been no cash, 100 percent leverage; is that right?

Mr. KENNEDY. What Mr. Lyons was saying is this may have been the pitch.

Mr. CHERTOFF. And no one there had any contrary information here in November 1993, a year and a half after this matter was first raised in the press, no one sitting around the table there had any contrary information?

Mr. KENNEDY. I don't know if anyone did or didn't. There was no discussion. Mr. Lyons said this may have been how it got started. I didn't consider it any big deal.

Mr. CHERTOFF. You didn't consider it a big deal that—whether or not the Clintons were able to borrow 100 percent of their initial investment in this project without having to put any money down or something like that?

Mr. KENNEDY. Again, I don't know whether you have just made a correct assertion or not, I do not know, but we're talking about a loan which, at this point in time, was 15 years old.

Mr. CHERTOFF. I'm operating off of the notes.

Mr. KENNEDY. Yes, sir, I understand that, but you also asked me why I didn't think it was a big deal.

Mr. CHERTOFF. Let me go on further. The next page goes on to say, kind of the middle of the page, "HRC"—

Mr. KENNEDY. Are we on 12536?

Mr. CHERTOFF. Yes.

The CHAIRMAN. Let me say this. We will make more progress if we can let him complete this. The rule also is either side can claim 15 minutes when we're down to two but I would rather not get into that. Let's let Mr. Chertoff finish this line of questioning, and then of course, whatever time the Minority needs to make its point, we'll be happy to make available.

Mr. CHERTOFF. Now it says, "HRC"—

Senator SARBANES. I just want to elucidate it, as we move along but if that's how the Chairman wants to do it, we'll have to come back and pick up on it again. But it seems to me in terms of trying to actually find out what occurred at this meeting, we ought to pursue this, but that's all right. I'll pick up on it as—

Mr. CHERTOFF. I'll move to the next section. Is there other discussion about the issue of 100 percent leverage that you remember having at this meeting, Mr. Kennedy?

Mr. KENNEDY. I don't recall any further discussion about the assertion that this is something that Mr. McDougal may have said to then-Governor Clinton.

Senator SARBANES. Since we have the other two people who were also at the meeting, why don't we find out their view on this subject matter?

The CHAIRMAN. Because we've done pretty well, and this is not always easy, I'm going to ask that Mr. Chertoff continue to go through this, and then, Senator Sarbanes, any questions that you wish to address either to Mr. Kennedy for clarification, Mr. Lindsey or Mr. Eggleston, it will be absolutely appropriate. Not that it's not appropriate to say well, look, we're at 10 minutes, but again we're down to 2. The rules provide for us to take up to 15 minutes when we have less than 5 members.

Senator SARBANES. I'm not going to argue the red light. The only point I was making is I take it Mr. Chertoff is moving to a different issue, and before we do that, I thought we ought to get from the other 2 people who were at the meeting their response to this same line of questioning with respect to this matter about which he's been asking.

The CHAIRMAN. He's actually continuing the same issue, so why don't we let him develop it and we will provide them all with ample opportunity to respond.

Mr. CHERTOFF. You continue on to the next page and the meeting continues to discuss the course of this investment; right? And it goes, for example on the third line, "1979, WWDC formed." That means that's the date that Whitewater Development Corporation was formed as expressed in the meeting; right?

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. Then it goes on to say, "Lot sales were slow—44 Lots. 230 Acres. HUD Interstate Land Sales Prospectus, Real Estate Slows Down. McDougal and Clinton advance and to service debt." What did that mean?

Mr. KENNEDY. I think that's one of my—on this particular—it's not an ampersand. In the handwritten notes, it's actually a dollar sign. "McDougal and Clinton advance dollars to service debt."

Mr. CHERTOFF. So at this point after the initial notion that we were going to invest and subdivide and get rich, it turns out real estate starts to go down and they have to start advancing money to service the debt because the sales of the lots aren't generating enough income to pay the debt back that was borrowed; right? Is that correct?

Mr. KENNEDY. I believe that's what happened, yes, Mr. Chertoff.

Mr. CHERTOFF. It goes on to say, "1981: McDougal—put in more dollars in than ? year." Who said that? Where did that come from, still Mr. Lyons?

Mr. KENNEDY. I believe again this is Mr. Lyons' portion of the meeting, as it were, yes, sir.

Mr. CHERTOFF. Then it goes, "W—buy a show home and put on one of the lots." What is the W there?

Mr. KENNEDY. I think it is referring to Whitewater the corporation.

Mr. CHERTOFF. But then it goes, "HRC—McDougal loan from MBT—will buy lot 13, 2.5 acres. Accelerate sales. McDougal also has a loan at Madison Bank." What did that refer to?

Mr. KENNEDY. Well, it requires a little bit of background, Mr. Chertoff. As I know this Committee knows and it has been fairly widely reported, Mrs. Clinton bought from Whitewater the corporation one of the lots, at which point a home was put on it to spur sales so it could serve as a demonstration home, and this is talking about that transaction.

Mr. CHERTOFF. Now that lot was bought with a personal loan that she received; right?

Mr. KENNEDY. I believe that's correct, Mr. Chertoff.

Mr. CHERTOFF. Did that come from Madison Bank and Trust?

Mr. KENNEDY. I believe so, Mr. Chertoff, but I'm now speaking from sort of what I recall, the actual documents would tell you.

Mr. CHERTOFF. And is that lot that she purchased, using a loan from a bank that she took out in her own name, was that lot 13?

Mr. KENNEDY. I believe that's correct, Mr. Chertoff.

Mr. CHERTOFF. Was there discussion in the meeting about why it was that Mrs. Clinton would have taken out a personal loan in order to set up a demonstration project for Whitewater Development and why she wouldn't have insisted that the corporation be the one to take out the loan?

Mr. KENNEDY. Mr. Chertoff, I don't recall any discussion along those lines. I mean again, Mr. Lyons is sort of reciting historical fact here.

Mr. CHERTOFF. What is the reference to "McDougal also has a loan at Madison Bank" mean?

Mr. KENNEDY. I think Mr. Lyons said McDougal at the time also had a loan from Madison Bank.

Mr. CHERTOFF. What was the significance of that?

Mr. KENNEDY. I think if you read on into the notes, the significance of it was that payments on Mrs. Clinton's loan got screwed up, or misapplied, whatever the case was, and actually went to pay off a McDougal loan as opposed to her own.

Mr. CHERTOFF. Your understanding is that there was, as you put it, a screwup at the bank and they misapplied the loan payments?

Mr. KENNEDY. I don't know who did what, Mr. Chertoff, but I do know that, as the Lyon report indicated, and again as has been, I think, relatively widely reported, that the Clintons attempted to make a payment on this loan which was misapplied.

Mr. CHERTOFF. I see Mr. Lindsey is chafing to get into the fray here, but I want to focus, if I may, attention, Mr. Lindsey, on what was said at the meeting. I understand there has been a lot of preparation to respond to these issues over a long period of time. But during the meeting, as displayed in the notes here, beginning where I began at 1978, what is your recollection about what was said about no cash, 100 percent leverage?

Mr. LINDSEY. Well, you kept referring that to the Clintons' participation. I believe that refers to everybody's participation.

Mr. CHERTOFF. OK.

Mr. LINDSEY. There was—the property was bought for about \$202,000. As you well know—it's reflected in there—\$182,000 was borrowed from Citizens Bank in Flippin and \$20,000 was borrowed

from Union National Bank. So the entire project, not just the Clintons' part but the McDougals' part too, was leveraged.

Mr. CHERTOFF. That's fair. But McDougal came up according to these notes, again at the meeting, we're talking about what was said at the meeting, and I take it you agree it was Mr. Lyons who is reporting here?

Mr. LINDSEY. Right. I believe at this point Mr. Lyons has taken over. I'll note the "get rich," according to the Stevens' Report, the most—if everything had been absolutely perfect in terms of interest rates and everything else, the most the Clintons could have made on this entire project was around \$47,500.

Mr. CHERTOFF. I guess that means different things in different places.

Mr. LINDSEY. But again, I think it is important to know that again we are not talking about the Clintons being leveraged by the McDougals, we are talking about that the entire project was leveraged—

Mr. CHERTOFF. By the bank.

Mr. LINDSEY. By the bank, right.

Mr. CHERTOFF. Let me stop you—

Mr. LINDSEY. The other point is, if I may finish, is both the Clintons and McDougals were personally liable on those loans—

Mr. CHERTOFF. I understand.

Mr. LINDSEY. —so that the bank had the right to go against the Clintons, the McDougals, or both to get their money. So that in effect the Clintons were \$202,000 responsible for this project, not \$101,000 or zero dollars.

Mr. CHERTOFF. I don't want to argue this with you. The point is to ask questions about what occurred at the meeting and I want to make sure we are correct on your recollection of the discussion at the meeting. And this is Mr. Lyons who is talking here; right? Is that—

Mr. LINDSEY. Yes, it's Mr. Lyons that's talking.

Mr. CHERTOFF. You have to answer questions. We are not dialoguing here.

Mr. LINDSEY. Yes.

Mr. CHERTOFF. According to what Mr. Lyons said, Mr. Lindsey, am I correct that it was Mr. McDougal who came forward with the plan, and as you point out quite properly, for both the McDougals and the Clintons to leverage themselves 100 percent using the bank as the source of funds?

Mr. LINDSEY. Correct, but personally liable on all those loans.

Mr. CHERTOFF. Then as we continue along, you will agree, will you not, that Mr. Lyons indicated that in 1979 the corporation was formed?

Mr. LINDSEY. That's correct. If I may, just to make it clear, in the original, the loans and the property were taken out in the Clintons' and McDougals' name. There was no corporate structure.

Mr. CHERTOFF. Right. And they were not required to put any money of their own into the project like a down payment?

Mr. LINDSEY. Well, they borrowed \$20,000 from Union National Bank for the down payment.

Mr. CHERTOFF. So they borrowed the down payment?

Mr. LINDSEY. Correct, both of them.

Mr. CHERTOFF. Unlike, for example, people who go to get a mortgage, just to put it in simple terms, those of us who are refinancing or getting our houses, we go to the bank, the bank usually says you have to put X amount up as a down payment and you can't borrow it. In this case what was put up is the down payment at one bank was borrowed from a second bank. Is that what you're telling us?

Mr. LINDSEY. That's correct. In 1979, they formed a corporation and they transferred the property to the corporation. My understanding is the debt was not transferred to the corporation, that they continued throughout up until 1991-92 to be personally liable on the unpaid balance of the debt.

Mr. CHERTOFF. As Mr. Lyons indicated in the notes, the original idea and the hope here was that the revenues or the money being earned by selling the lots would be more than sufficient to pay off the debt; right?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. And if that worked out as it was planned, and as Mr. McDougal and the Clintons originally thought it would, this would be a deal in which, after having borrowed all the money to start up the project, the payment of the loan back would be covered by the proceeds of the sales, and in the end, they would have free and clear their profit? That was the idea; right?

Mr. LINDSEY. If everything—if they had sold all the lots from day one and if interest rates had stayed basically equal with respect to what they could charge and what the banks were charging them, yes, the Pillsbury Madison Report indicates that they would have probably made about \$47,000 each, if all of that had occurred.

Mr. CHERTOFF. Now again, Mr. Lindsey, I know you're eager to get into discussing a whole lot of things, but we have to keep it to what's being discussed here in November 1993 before there was a Pillsbury Report.

Mr. LINDSEY. But of course, the Pillsbury Madison Report confirms the Lyons' Report.

The CHAIRMAN. Please, come on. Please.

Mr. CHERTOFF. Mr. Lindsey, you're an attorney and you understand the way the rules work. Now, I want to just go on. In 1981, it says Mr. Lyons indicated the McDougals had "put in more money than ? year." What was that?

Mr. LINDSEY. I don't know exactly what that is, but I think the record would reflect that by 1981 the Clintons had put up more money—excuse me, the McDougals had put more money into it than the Clintons had in terms of money to service the debt.

Mr. CHERTOFF. And then finally down here, this reference that I asked Mr. Kennedy about, "HRC—McDougal loan from MBT," is that the Madison Bank and Trust?

Mr. LINDSEY. My understanding is yes.

Mr. CHERTOFF. "Will buy lot 13, 2.5 acres. Accelerate sales. McDougal also has a loan at Madison Bank." Am I correct that that refers to Mrs. Clinton taking out a loan from Madison Bank and Trust or its successor bank in order to purchase lot 13?

Mr. LINDSEY. Yes. You made the point that that was a personal loan. I guess my only quibbling with that is that all the loans were personal loans, including the mortgage loan, including the Union

loan, including the refinancing of those loans. But yes, this was a personal loan as well.

Mr. CHERTOFF. Let me stop you, Mr. Lindsey. The original loans that were taken out personally were taken out before the corporation was formed; right?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Is it your testimony that, after the corporation was formed in 1979, the corporation never took out loans?

Mr. LINDSEY. I don't know the answer to that. My sense is that if—good banking would say that this corporation, as highly leveraged as it was, that you would at least—if you didn't require the individuals to take the loan, you would at least require them to be guarantors of the loan, which would personally put them on the loan as well.

So whether the corporation took it and Mrs. Clinton guaranteed that or whether Mrs. Clinton took it, I think is quibbling basically.

Mr. CHERTOFF. Well, let me finish up with this because you say it's quibbling, because that's kind of what's puzzling about this, and I want to ask you whether this was discussed at the meeting.

If what you say is correct and it doesn't make a difference, then obviously it's generally better to be the guarantor on a loan rather than to be the first person who is principally liable, because the guarantor only pays if the corporation is not able to pay.

So the question is this. Was there discussion at the meeting of a reason why Mrs. Clinton wouldn't have insisted that the corporation borrow the money for the demonstration lot, why she would have agreed to purchase the demonstration lot personally? And was there discussion about whether that had anything to do with the bank's willingness to make any additional loans to Whitewater Development in view of Mr. McDougal's relationship with the bank?

Mr. LINDSEY. I do not remember that being a discussion at this meeting.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Lindsey, I wanted to clear one thing up. The notion is quoted around here that the Clintons or, for that matter, the McDougals, undertook no burden, as it were, in obtaining the money with which to buy this land. As I understand it, they took out a personal loan and they were obligated on that personal loan; is that correct?

Mr. LINDSEY. Absolutely. For the full extent of the loan.

Senator SARBANES. In fact, in the Clinton's instance—well, in either instance, I guess, it was not for half of the money used, but it was for the total loan.

Mr. LINDSEY. Correct.

Senator SARBANES. And for that they were obligated personally?

Mr. LINDSEY. Correct.

Senator SARBANES. So it was suggested earlier, well, it all came from the bank. It really came from the borrowers, from the bank since they had assumed the burden of repaying it for which I take it they were liable for any personal holdings they had, and in effect, personally liable in the sense of having to meet the obligation. They failed to meet the obligation they would have defaulted on a personal liability; is that not correct?

Mr. LINDSEY. That's correct. And the bank could take the property and then go after the Clintons for any deficiency, and in fact, they made significant payments to the bank to service those loans, personally.

Senator SARBANES. Over the course of the subsequent period?

Mr. LINDSEY. That's correct, yes, sir.

Mr. BEN-VENISTE. So that the notion of it being highly leveraged is only in the first instance, there is no cash out-of-pocket, because all the money is borrowed; correct?

Mr. LINDSEY. Correct.

Mr. BEN-VENISTE. So that if I get a bank to lend me \$50,000 to buy a little cabin cruiser, and I am such a good sailor that I don't take out any insurance on it, and I go out in a storm, and the boat sinks, then even though I have fully leveraged that boat, the bank isn't going to be satisfied with my story about a big storm coming up. They are going to come after me to get their \$50,000 back.

Mr. LINDSEY. Absolutely.

Mr. BEN-VENISTE. They will put a lien on my house or do whatever else they can to get their \$50,000, as they should. And in this case, the Clintons were liable not only for half the project, but for the full amount that was borrowed, if I understand your testimony.

Mr. LINDSEY. In the end the Clintons turned out to be a better risk for the bank than the McDougals so if the bank had come after anyone—had to come after anyone they would have come after the Clintons, in my judgment.

Mr. BEN-VENISTE. Now the loans that were made by the bank were not made by Madison Guaranty Bank?

Mr. LINDSEY. No, sir. The Clintons had at no time a loan from the Madison Guaranty Savings & Loan.

Mr. BEN-VENISTE. OK, and so the money that was borrowed from the other banks was the Clintons' obligation to repay and they did, in fact, make payments on those loans?

Mr. LINDSEY. Correct, in fact Mrs. Clinton repurchased this lot 13, because she had the underlying responsibility for it, and the way to protect her interests and her assets was to repurchase that property and try to resell it herself in order to get something out of the sale so that she would not have to pay the \$30,000 borrowed from Madison personally.

Mr. BEN-VENISTE. I want to turn to Mr. Eggleston for a moment, and address some questions that have been raised here today that don't officially involve our jurisdiction but involve this Travelgate matter. But since we've opened the doors some little bit on this, it is my understanding that the House Committee has released an FBI report of an interview of Mr. Watkins by two special agents of the FBI on August 10, 1993, which we don't have because we don't have jurisdiction over the Travel Office matter. But according to The Washington Post report of that release, this interview is in substance a mirror image of the substance of what is in Mr. Watkins' memorandum, draft memorandum that has recently been discovered. Is that your understanding, Mr. Eggleston?

Mr. EGGLESTON. I too, sir, have not seen the FBI report, but from reading the press reports of it that is my understanding.

Mr. BEN-VENISTE. So that what I regard as the big ticket item here, whether or not Mr. Watkins agrees in his recollection with

Mrs. Clinton's recollection, or Mr. Watkins' interpretation of what occurred is different than Mrs. Clinton's interpretation of what occurred, the simple fact is that nobody told Mr. Watkins what to say to the FBI; he told the FBI, so far as you know, what occurred to the best of his recollection.

Mr. EGGLESTON. That was my understanding. I believe that Mr. Watkins was represented by counsel throughout this time period. And I did not have any extended dealings with him in preparation for any of this stuff. He had a counsel and his counsel did whatever he did.

Mr. BEN-VENISTE. So that the important issue and it may be suggested by the prefatory language in Mr. Watkins' memorandum where he said he had been very protective and so forth and deliberately vague and I assume, Congressman Klinger and others will question about that, but in fact, he was direct and apparently gave the FBI his recollection as best he recalled it without being influenced by anybody. Nobody, to the best of your knowledge, attempted to influence Mr. Watkins; did they?

Mr. EGGLESTON. No one to the best of my knowledge, sir.

Mr. BEN-VENISTE. Did you have a conversation with Mr. Watkins to say go easy on Mrs. Clinton?

Mr. EGGLESTON. No. I mean, as I say, he was represented by counsel and I wouldn't—I wouldn't say that.

Mr. BEN-VENISTE. Did Mr. Watkins or anyone else tell you that Mr. Watkins had been importuned by anyone to shade the facts in his recitation of these events to the FBI?

Mr. EGGLESTON. I—no. No, not that I was ever told.

The CHAIRMAN. I am just going to take a couple of minutes if I might. Mr. Kennedy, you were the managing partner 1985, 1986, 1987, 1988?

Mr. KENNEDY. No, sir, not in 1985.

The CHAIRMAN. When were you the managing partner?

Mr. KENNEDY. I think I became managing partner—don't hold me to this, Mr. Chairman—middle of 1986, late 1986.

The CHAIRMAN. Let me ask you this. You weren't aware of the fact—you were a partner and you became managing partner—that the Clintons had a relationship with the McDougals in Whitewater, were you, when your firm the Rose Law Firm came to represent Madison, were you?

Mr. KENNEDY. No, sir, I don't think I knew that at the time, no.

The CHAIRMAN. Shouldn't you have been advised, the partners have been advised of that? Isn't that a general policy?

Mr. KENNEDY. Well, with all due respect, Mr. Chairman, we may have then—I don't, I don't recall it. We have been advised on some basis.

The CHAIRMAN. You weren't advised?

Mr. KENNEDY. I don't recall being advised.

The CHAIRMAN. When did you come to know that? Didn't you say you came to know that sometime in 1992?

Mr. KENNEDY. I came to know that, I believe, for a fact in 1991.

The CHAIRMAN. Now let me ask you this: There has been a lot said—and I want to ask if we give him this document, bring it down there, please—about who did and who didn't bring in the business, as it related to the Madison bank, and the representation

of the Rose Law Firm. I gave you a document and I highlighted, it says, "RTC, Resolution Trust Corporation, Office of Inspector General." Do you have that?

Mr. KENNEDY. Yes, it was just handed to me. Yes, sir.

The CHAIRMAN. I call your attention to the third paragraph. Now, you want to read that? This is Latham's interview with the Federal investigators. Do you know who Latham is?

Mr. KENNEDY. I do from testimony, yes, sir.

The CHAIRMAN. All right. He worked at the bank and he was the fellow who your associate and now partner, former partner, had some interaction with, Mr. Massey. Read that out loud.

Mr. KENNEDY. What? Do you want me to read—

The CHAIRMAN. "Latham said."

Mr. KENNEDY. Yes sir. Do you want me to read just the highlighted portion or the entire paragraph?

The CHAIRMAN. Just that—

Mr. KENNEDY. Highlighted portion.

Senator SARBANES. Read it all.

Mr. KENNEDY. Yes, sir.

Latham said at one time, date not recalled, James McDougal suggested that Madison Guaranty use Rose for some of the legal work at the institution. Latham said that, "McDougal had friends over there, he suggested we use them." Latham said when asked who the friends were that it was Hillary Rodham Clinton and others.

The CHAIRMAN. You can go on and read the other because Senator Sarbanes asked you to read the rest.

Mr. KENNEDY. I'm sorry.

The CHAIRMAN. Go ahead.

Mr. KENNEDY. OK.

Massey said he was also familiar with the Rose attorney, Richard Massey, with whom he had attended college at the University of Central Arkansas. Latham said he did not specifically recall the manner by which Rose was paid but knew that at some point the firm was on retainer which he heard was \$2,000 per month. Latham said he did not know who the billing attorney at Rose was.

Senator SARBANES. Could he read the next paragraph. That's the one that gives the complete picture.

The CHAIRMAN. Do you want to read the next paragraph, please?

Mr. KENNEDY. Yes, sir.

Latham said he recalled Rose working on only one matter for Madison Guaranty. He said that the issue Rose worked on concerned a broker-dealer operation that was purchased by Madison. He said that he recalled that Rose worked either on the acquisition of the broker-dealer operation, or on legal aspects of the acquisition after it had been done. Latham said that Massey worked on the matter because he had specifically asked for him to do so. Latham could not recall any specifics of what the services performed by Rose in the matter were, except that he did recall one occasion when he and Massey met with Beverly Bassett of the Arkansas Securities Department. He could not recall details of that meeting.

The CHAIRMAN. Now, I am going to refer you, particularly, to that section about how the business came in. And that goes back up to the first paragraph, second sentence.

Latham said that, "McDougal had friends over there, he suggested we use them." Latham said when asked who the friends were that it was Hillary Rodham Clinton and others.

Do you have any reason to believe there was any other reason, I mean, why would Hillary Rodham Clinton be the billing partner if she did not generally do securities work? Wouldn't it make sense

then and comport with what Mr. Latham said, that it was indeed "McDougal said," McDougal is saying this to Latham, McDougal was the owner of the bank, that the reason the Rose Law Firm was rehired was because of the Clintons? Who turns out to be the billing partner, Mrs. Clinton? Why would she be the billing partner if she didn't bring the business in and if this was not her usual area in terms of securities?

I am asking as the—you became the managing partner during a period of this—wouldn't that comport with why she was the billing attorney?

Mr. KENNEDY. Mr. Chairman, with all due respect, it is late in the day. Can you repeat the question? I am a little bit confused about what you are asking.

The CHAIRMAN. If indeed Mrs. Clinton was the principal reason for bringing the business in, wouldn't it make sense that she would be the billing attorney? Senior attorney?

Mr. KENNEDY. It certainly could be the case.

The CHAIRMAN. Let me ask one step further then. Would it make sense if she had nothing to do with this business that a young associate would ask a litigating partner to handle this as opposed to people in the section that he worked with in the securities division?

Mr. KENNEDY. Mr. Chairman, I have no independent—I don't know.

The CHAIRMAN. I understand you don't know.

Mr. KENNEDY. I don't know.

The CHAIRMAN. I am talking about the practice of the firm.

Mr. KENNEDY. That's what I am trying to get to. I don't know the specifics of what went on, I don't know what Mr. Latham did, what Mr. Massey did, or even at this time what Mrs. Clinton did.

The CHAIRMAN. We know Mr. Massey did a lot of work on this and we know Mrs. Clinton did some work as established by the bills and we know Mrs. Clinton was the billing partner; correct?

Mr. KENNEDY. That's correct, sir.

The CHAIRMAN. Wouldn't that support this statement by Latham that McDougal had friends over there and he said that it was Hillary Rodham Clinton and that's the reason the business came?

Mr. KENNEDY. Well—

The CHAIRMAN. Wouldn't that explain why she became the billing attorney?

Mr. KENNEDY. It could be, Mr. Chairman, that that is the case. It could also be that Rick brought the business in, and McDougal found out about it and called over and said Hillary, would you watch over this for me.

The CHAIRMAN. Did you know that this young associate brought the business in? Were you advised of that back in 1986 or 1985?

Mr. KENNEDY. The short answer is no, Mr. Chairman. I don't know how the business came in.

The CHAIRMAN. All right. Mr. Chertoff.

Mr. CHERTOFF. I just have one last area I want to ask you about, very briefly. This is back where we started with, "Vacuum Rose Law files." The reference to "Documents never go out," and your typed version says, "quietly," I just want to be clear on this. You typed up a transcription of your handwritten notes for your lawyer.

Mr. KENNEDY. That's correct.

Mr. CHERTOFF. And I assume you tried to be as accurate as reasonably possible for your lawyer?

Mr. KENNEDY. Mr. Chertoff, as I have testified, I did it on a very quick and dirty basis. I never dreamed I would be typing notes for posterity.

Mr. CHERTOFF. You still wanted to be as accurate as you reasonably could. There is no percentage, Mr. Kennedy, in trying to fool your own lawyer, is there?

Mr. KENNEDY. Mr. Chertoff, certainly I wasn't trying to fool my own lawyer, but as the typed transcription indicates, I did not do a perfect job. I am here testifying in front of you, it was quick, it was dirty, it was done in a hurry simply to help them read my handwriting.

Mr. CHERTOFF. The word you typed was "quietly."

Mr. KENNEDY. That is correct, with a question mark in parentheses afterward.

Mr. CHERTOFF. When was it you picked up the magnifying glass and it became "Documents never go out quality"?

Mr. KENNEDY. When this became an issue of some significance.

Mr. CHERTOFF. Now with respect to the Rose Law files so we are not confused, you were asked some questions about Mr. Massey's personal files, which he made a copy of, gave to Mr. Foster, they kind of made a round robin, they were in Mr. Hubbell's basement for awhile, they made their way to Mr. Kendall and they came back to the firm, and Mr. Massey checked and he got back everything he gave to Mr. Foster. But there were other files relating to work done on Madison, including IDC, also known as Castle Grande, and those were located in other areas of the firm; isn't that correct, Mr. Kennedy?

Mr. KENNEDY. That's what I have been told, Mr. Chertoff.

Mr. CHERTOFF. When Mr. Foster, in 1992, was looking to collect records, he, in fact, came to you to help him expedite getting the records; right?

Mr. KENNEDY. He wanted me to help speed retrieval of the records from remote storage.

Mr. CHERTOFF. So you, in fact, directed the people who handled remote storage to help him get records out of remote storage.

Mr. KENNEDY. Promptly.

Mr. CHERTOFF. You don't know what he got?

Mr. KENNEDY. No, sir, I don't.

Mr. CHERTOFF. You don't know what he did with it?

Mr. KENNEDY. No, sir, I do not.

Mr. CHERTOFF. Let me ask you finally about the issue of billing printouts, time printouts. Have you seen those printouts that were released within the last week from the White House?

Mr. KENNEDY. Yes, I have seen them.

Mr. CHERTOFF. We are given to understand that what the White House released were copies of printouts with Mr. Foster's handwriting on them. I take it you're familiar with that type of printout as a document produced by the law firm?

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. I guess we have now accounted for one copy of the printout, a Xerox of the printout which has handwriting on it. But the question I have for you, Mr. Kennedy, is, where is the

original of that and why was it not possible for the law firm to produce to this Committee until this year its copy of any such records?

Mr. KENNEDY. Mr. Chertoff, I don't know why with specificity or of things that I know or have dealt with. It is entirely likely, however, that the original of that printout was destroyed in the normal course along with the firm's document destruction policy.

Mr. CHERTOFF. What is the normal course of destroying printouts like that? How long after the fact of the bills would they be destroyed?

Mr. KENNEDY. Approximately 3 years.

Mr. CHERTOFF. So if that's correct, then these bills or these printouts would have been destroyed sometime between 1988 and 1989, 3 years after 1985 and 1986?

Mr. KENNEDY. That's correct.

Mr. CHERTOFF. But we know that at least a copy of these bills existed in 1992, when Mr. Hubbell spoke to Ms. Thomases and a copy made their way over to the White House. Is it your testimony that it is the normal practice to let a copy of the firm's billing records leave—let the only copy of the firm's billing records leave the firm?

Mr. KENNEDY. Mr. Chertoff—

Mr. CHERTOFF. When you were managing partner?

Mr. KENNEDY. Well, you need to draw a distinction now. In this day and age you've got hard copies and electronic copies. So.

Mr. CHERTOFF. Do you have electronic copies at the firm of these records?

Mr. KENNEDY. I cannot—you all are going to talk to Mr. Clark. Mr. Clark is up to speed on these matters as to what the firm does and doesn't have at this point in time. But—the point is that—oh, one second.

[Witness conferred with counsel.]

What I am trying to get to is that the original, the hard copy, could have been destroyed in the normal course.

Mr. CHERTOFF. Could not have been destroyed in the normal course? Anything could have happened?

Mr. KENNEDY. That's correct. That's correct.

Mr. CHERTOFF. But the bottom line was when the firm had to produce documents to the RTC or to the Senate, they were not able to produce the printout. And the only copy that has come to light is the copy somewhere in the White House, and that's a fact.

Mr. KENNEDY. Mr. Chertoff, that's my understanding.

Mr. CHERTOFF. My question to you is this: From the time period you were managing partner, was it considered remotely acceptable conduct at the law firm to remove the only copy of the firm's private and confidential client billing records outside of the custody and control of the firm?

Mr. KENNEDY. As a general matter, no, sir.

Mr. CHERTOFF. That would be highly inappropriate, right?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. And in fact, it would pretty much outrage you, wouldn't it?

Mr. KENNEDY. I wouldn't like it, Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Now as I understand it, Mr. Kennedy, it is your testimony that this language which so much was made about when these notes were first provided, "Vacuum" and then a blank and then "Rose Law files," and the assertion was made in a very public way that this showed that this was a verb that you were— instructions were being given vacuum the Rose Law files.

Now as I understand your testimony, what transpired was a report that there existed a vacuum in the Rose Law Firm files with respect to some of these matters; is that correct?

Mr. KENNEDY. Well, my testimony is a little broader than that, Senator Sarbanes. It is basically that anybody trying to deal with Whitewater in this case—let me be sure that we are clear. I am not talking about Madison, I am talking about Whitewater, the corporation, Whitewater, the real estate development, there was an information vacuum, the records were incomplete. They were a shambles. And so that's what the vacuum talks about.

Senator SARBANES. Mr. Lindsey and Mr. Eggleston, is that your impression of what the conversation was about at that meeting?

Mr. LINDSEY. Senator, I remember there was a conversation that the records were not very good. And I don't remember the word "vacuum" ever being used, but I do remember a conversation about that the records were not good and that you could not reconstruct a lot of this. And if you remember, you may not remember the Lyons' Report, as a caveat puts in there, that they were hampered in their reconstruction because the records were not very good.

Senator SARBANES. Mr. Eggleston.

Mr. EGGLESTON. Senator, that is essentially my recollection. I don't remember the word "vacuum" being used at all or not being used. I remember Mr. Kennedy talked about having tried to look into the Whitewater issue in 1991 or so and couldn't find records. I remember him talking about that at the meeting. I don't specifically remember the word "vacuum" being used.

Senator SARBANES. Let me ask each of you, were any instructions or directions or tasking given that you would regard as improper? And in particular, was any tasking given that you should use Government positions to obtain confidential information and then provide that to Mr. Kendall?

Mr. EGGLESTON. No, sir.

Senator SARBANES. Mr. Lindsey.

Mr. LINDSEY. No, sir. But let me answer it a little bit. Both Mr. Eggleston and Mr. Kennedy indicated that at no time did anyone imply, state, suggest that any documents be hidden, altered, destroyed. I would simply agree with that, that at no point did anyone at that meeting suggest that. At no point did anyone suggest that anybody should use their relationship with any agency or—in the Government to get any information. And, in fact, I have never spoken to anyone at any Federal agency with respect to the substance of any of these matters other than the instance that this Committee knows about related to the RTC/White House contact issue that you had hearings about over a year ago.

Mr. KENNEDY. My answer is no, Senator Sarbanes.

Mr. BEN-VENISTE. Let me ask you this. Obviously we had Mr. Clark here the other day who could have provided some insight on

the document destruction policy, but why don't you tell us in general what a document destruction policy is.

Mr. KENNEDY. Mr. Ben-Veniste, most law firms, as I suppose the lawyers in the room know, in some form or fashion have a policy or a procedure whereby after files reach a certain age, or reach a certain level of staleness, they are destroyed, or possibly microfilmed or disposed of. It's the nature of the beast, law firms generate an enormous amount of paper and you have to do that.

Mr. BEN-VENISTE. Why do you have to do that?

Mr. KENNEDY. Well, I can speak to this firm, but I can speak to sort of law firms in general. In this firm we were simply running out of room in our remote storage. We simply did not have enough room to store all the paper.

Mr. BEN-VENISTE. Costs you money to do it?

Mr. KENNEDY. A lot.

Mr. BEN-VENISTE. If there is no reason to keep it, there is no point in spending the money; correct?

Mr. KENNEDY. That's correct.

Mr. BEN-VENISTE. Now to go back to the files relating to Madison—you have talked about the files relating to Whitewater—files relating to Madison, was there some law in effect in 1985 in Arkansas about how long you needed to maintain files?

Mr. KENNEDY. No, sir, I don't recall such a statute.

Mr. BEN-VENISTE. Was there some procedure mandated by the local bar?

Mr. KENNEDY. No, sir, I don't recall such.

Mr. BEN-VENISTE. So this was left up to the individual law firms to act on the basis of prudence and need?

Mr. KENNEDY. That's correct.

Mr. BEN-VENISTE. So at some point you determined at the Rose Law Firm that you ought to have a policy with regard to destroying files that were unnecessary?

Mr. KENNEDY. Mr. Ben-Veniste, I am going to give you a little bit of a long answer to your question. When I became Chief Operating Officer, managing partner, in 1986, I discovered that: One, we were running out of room at remote storage; two, we had not been dealing effectively with document destruction, as a matter of firm policies or procedure. So I made it one of my priorities to get that process started and on track. And that's one of the things I tried to do during my tenure as Chief Operating Officer.

Mr. BEN-VENISTE. What was the basic policy you came up with?

Mr. KENNEDY. The basic policy is with regard to client matters, we developed lists of the files that each attorney had at remote and we developed—those lists were delivered to the partners and the partners were asked to indicate which files should be destroyed, which files should be microfilmed and then destroyed, or which files or portions thereof should be retained in hard copy form. What I attempted to do was to get the partners and the lawyers, the senior associates that might have client files open in remote storage, to deal with the proper destruction by designating files.

Mr. BEN-VENISTE. Now, lawyers, or some lawyers, tend to be pack rats.

Mr. KENNEDY. That's true.

Mr. BEN-VENISTE. In the case of Mr. Massey, he determined that he was going to keep his original files way beyond this policy of 3 years.

Mr. KENNEDY. That's correct.

Mr. BEN-VENISTE. So that we are fortuitous that we have, as a Committee, had an opportunity to review Mr. Massey's files regarding the Madison representation, and for all of us to determine that there's nothing untoward in those files, that Mr. Massey didn't do anything wrong, the Rose Firm didn't do anything wrong, and Mrs. Clinton didn't do anything wrong in connection with the files that Mr. Massey maintained.

Mr. KENNEDY. That's correct.

Mr. BEN-VENISTE. It might have been otherwise that those files could have been, and quite properly so, destroyed in the regular course of business.

Mr. KENNEDY. That is correct also, Mr. Ben-Veniste.

Mr. BEN-VENISTE. With respect to the time records, the documents which have been produced most recently by the White House, it is fairly remarkable, wouldn't you say, that those records, which are not essential records of the Rose Law Firm, have turned up?

Mr. KENNEDY. That is correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Because, similarly, those documents could have been destroyed 8 or 9 years ago?

Mr. KENNEDY. That is correct. And I am going to ask your indulgence. I will give you a little bit of background there as well.

In the 1989-90 timeframe, we had an unfortunate occurrence. Our accounting supervisor passed away. We had a new accounting supervisor come in. She looked at the records and said that basically we had a god-awful mess on our hands that we had too much junk. We had records from far too long. So again, as part of the document destruction program, I instructed her to go ahead and clean the accounting records of the firm up as well.

In addition, in 1992, we went through a conversion of our accounting software system, from one—I beg the Committee's indulgence but you have to understand that this was a big deal—we changed from one accounting software package to another. And that conversion was something I was working on when I departed the firm, and as part of that process, we got rid of a lot of old accounting information.

Mr. BEN-VENISTE. So, that, if I understand your testimony, it is both remarkable and fortuitous because the billing records that have been produced allow us to go back in time, where people's memories clearly could not be terribly reliable, and look at the time spent in excruciating detail to the 10th of an hour, and recorded by Rose lawyers in connection with the Madison representation.

Mr. KENNEDY. Mr. Ben-Veniste, it is amazing. It is remarkable in that these records could have been destroyed, absolutely, in the matter of course.

Mr. BEN-VENISTE. Let me ask a question about the material that the Chairman showed you earlier with respect to John Latham's statement. Do you have that handy and could we put that back up?

Mr. KENNEDY. I do, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Directing your attention to the fourth paragraph. Mr. Latham said that, "The issue Rose worked on concerned a broker-dealer operation that was purchased by Madison. He said that he recalled that Rose worked either on the acquisition of the broker-dealer operation, or on legal aspects of the acquisition after it had been done." The broker-dealer issue was not an issue of an acquisition, was it?

Mr. KENNEDY. I don't believe that it was, Mr. Ben-Veniste. As you know, I didn't work on the matter. I don't know the ins and outs of it, but I don't believe it was an acquisition issue. It was, instead, a regulatory issue.

Mr. BEN-VENISTE. As to whether the Madison bank could be licensed as a broker-dealer.

Mr. KENNEDY. That is correct.

Mr. BEN-VENISTE. So Mr. Latham's recollection of things when he gave his statements which was, in fact, July 16, 1995, that has been put forward here, is clearly erroneous in terms of what the actual project was. He has it blurred.

Mr. KENNEDY. That's right. Based on what I understand Mr. Massey's testimony to be, he has it blurred.

Mr. BEN-VENISTE. And with respect to the question of whether he recalled anyone from Rose working on the preferred stock offering contemplated or proposed by Madison, he said he did not, going to the last paragraph on that page.

Mr. KENNEDY. That is correct.

Mr. BEN-VENISTE. Therefore, you know, that is all Mr. Massey worked on, this would be quite a blow to Mr. Massey's ego, I guess, but Mr. Latham by this time had forgotten all about Mr. Massey.

Mr. KENNEDY. It seems that he had.

Mr. BEN-VENISTE. Now there was further testimony that Mr. Latham didn't have the authority to engage attorneys on behalf of the Madison Bank. We have the deposition of Stephen Cuffman, and Stephen Cuffman apparently was a member of the board of Madison, and an attorney, and I will simply read you from page 3 of his deposition to Pillsbury Madison in connection with the so-called Stevens' Report to the RTC. It says:

Question: Let's start with your legal work. When was the first time you did any legal work for Madison?

Answer: That's how I came in contact with Madison I believe late 1983, early 1984. In that timeframe I began to do work for Madison.

Question: And how did it come to be?

Answer: John Latham. I am not sure what his title was, but he became CEO with Madison. He was a friend and he and I worked together at the Public Service Commission. He began to refer work to me. Did progressively more over the next couple of years.

So contrary to the reflected wisdom that we have been operating under for the last week, apparently Mr. Latham also forgot that he, in fact, had authority. So the issue that was put to you of how did this matter come to the Rose Law Firm that Mr. Massey worked on and Mrs. Clinton became billing partner of, seems to have been an effort by, as Mr. Massey testified, his ability to pitch Mr. Latham following Mr. Latham's inquiry about technical matters regarding securities law, a mention by him to Mr. Massey to Mrs. Clinton that he was doing this, and could she talk to Mr. McDougal. And lo and behold, the very matter that Mr. Massey has

pitched Mr. Latham on comes into the firm, as the first matter for Madison.

Mr. KENNEDY. That is correct, Mr. Ben-Veniste. I mean that is what it appears to be.

Mr. BEN-VENISTE. Is there anything untoward or improper or surprising that an enterprising young associate at the Rose Law Firm in 1985 would attempt to try to get business into the firm?

Mr. KENNEDY. He was absolutely encouraged to do so.

Mr. BEN-VENISTE. I have nothing further, thank you.

The CHAIRMAN. I will not revisit that. I will spare everybody the pain of going over Mr. Massey's testimony, but it certainly is inconsistent with the summary that was completed. He would have recalled if he brought the client in, and he indicated that he had no recollection, and it is a ridiculous stretch.

Now let me go over this for the last time because I find your interpretation, given what is contained in the notes submitted to us, difficult to understand. "Vacuum Rose Law files." We have no dispute that that's what that says, "Vacuum, blank, Rose Law files." Is that correct?

Mr. KENNEDY. Yes, sir, but they are not an integrated phrase.

The CHAIRMAN. I understand, but this is what appears in your notes. Is that right?

Mr. KENNEDY. Do these words appear in my notes? Yes, they do, Mr. Chairman.

The CHAIRMAN. As I read them?

Mr. KENNEDY. Not if you run them together as a single phrase, no, sir.

The CHAIRMAN. In other words, you want me to continue then with Whitewater documents, or Whitewater DC? What is that, WWDC?

Mr. KENNEDY. Whitewater Development Corporation.

The CHAIRMAN. Development Corporation documents, right?

Mr. KENNEDY. Right.

The CHAIRMAN. Docs, documents?

Mr. KENNEDY. Docs, yes, sir.

The CHAIRMAN. Does that stand for documents?

Mr. KENNEDY. It does.

The CHAIRMAN. I thought you might have a new interpretation. That's why I wanted to be sure.

Mr. KENNEDY. Sorry to disappoint you, Mr. Chairman.

The CHAIRMAN. You don't disappoint me, not at all. The next one is "subpoena," right?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. So, referring to the Rose Law files, vacuum, Whitewater documents, subpoena, your contention is that these files were, and you meant that they were incomplete, that they were not good. I am using words that you just used in the course of describing what you meant, that they were in a shambles; is that correct?

Mr. KENNEDY. The Whitewater documents? Yes, sir.

The CHAIRMAN. Then why didn't you say they were incomplete? You see, Mr. Kennedy, when you are summarizing, for you to say vacuum, why—incomplete, shambles, not good, now you suggest that at this point that the word "vacuum" should be taken in a to-

tally different context. There was a vacuum? No explanation. Then we go down to the second line. "Documents" underlined, underlined, "never go out." Why did you make that point?

Mr. KENNEDY. The phraseology is "never know go out," Mr. Chairman.

The CHAIRMAN. Why?

Mr. KENNEDY. Because there was a discussion about how the Whitewater documents—and again, we are not talking about Madison files—were delivered from the Rose Law Firm to the campaign.

The CHAIRMAN. And then we say again it is not "quietly," because you see, if you gave the interpretation as first translated by yourself, that you typed "quietly," you read this, very clearly, saying, "get them out quietly."

Mr. KENNEDY. Mr. Chairman, there is a question mark in the hole, in other words, in parentheses outside the word quietly, is there not? Yes, there is. OK. And that was an indication by me to my counsel that I did not know what that word was.

The CHAIRMAN. OK. "Vacuum Rose Law files," "Whitewater documents," we are talking about those at this 1993 meeting; is that correct?

Mr. KENNEDY. We are talking about the Whitewater documents? Yes, sir.

The CHAIRMAN. In other words, your interpretation now is that we are talking about those documents and this is in 1993, the documents that exist are Whitewater documents; is that correct?

Mr. KENNEDY. Mr. Chairman, I don't understand your question. Would you restate it, please?

The CHAIRMAN. Yes. The notes were taken at the 1993 meeting?

Mr. KENNEDY. That's correct.

The CHAIRMAN. November 5; right?

Mr. KENNEDY. That's correct.

The CHAIRMAN. You are talking about the condition of these files; is that correct?

Mr. KENNEDY. The condition of the Whitewater document files, yes, sir.

The CHAIRMAN. Yes. Well, there weren't any Whitewater document files in the Rose Law Firm at that time, were there?

Mr. KENNEDY. In 1993?

The CHAIRMAN. Yes.

Mr. KENNEDY. No, sir, I don't believe so.

The CHAIRMAN. So why would you put "Rose Law files"? There are none there.

Mr. KENNEDY. Mr. Chairman—

The CHAIRMAN. No. Wait a minute. You first tell me—let me explain and then I will give you every opportunity to answer the question.

If you are referring to incomplete Whitewater documents that you have in your possession, that the campaign has that are incomplete, why do you refer to the Rose Law files when there are no Whitewater Rose Law files at this time?

Mr. KENNEDY. Mr. Chairman, those files existed at one time. The Whitewater files were Rose files when they were in my possession when I was performing legal work for Mrs. Clinton. And regardless of how you or anyone else want to—

The CHAIRMAN. So you are reflecting—no, wait, this is important. Are you now saying that you were reflecting on a time when you saw those files?

Mr. KENNEDY. When you say “reflecting,” what are you talking about, Mr. Chairman?

The CHAIRMAN. At this meeting, who talked about these files—you are taking notes now. Was this your observation? Whose observation was this, “Vacuum Rose Law files, WWDC documents, subpoena?” Was this—

Mr. KENNEDY. As Mr. Eggleston testified, it was me talking.

The CHAIRMAN. Did you talk at any other time during this meeting that you recall that’s reflected in your notes?

Mr. KENNEDY. I believe so, yes.

The CHAIRMAN. Yes. So you are talking now?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. What did you say? Let me hear what you said.

Mr. KENNEDY. I said that we had an information vacuum, that we were dealing in a vacuum when you tried to deal with the substantive corporate records of Whitewater, and I was trying to convey that to Mr. Kendall.

The CHAIRMAN. Indeed, at that time, were there any Whitewater files in the law firm that you knew of?

Mr. KENNEDY. These documents I was referring to? No, sir.

The CHAIRMAN. There weren’t any there.

Mr. KENNEDY. There were at one time.

The CHAIRMAN. But you are now talking in 1993 about documents that were at the Rose Law Firm, right?

Mr. KENNEDY. Mr. Chairman—

The CHAIRMAN. If they weren’t Rose Law files that encompass all of Madison, then they were files that talked about, and I am willing to concede, Whitewater, so they were Whitewater documents; is that right?

Mr. KENNEDY. Mr. Chairman, you keep trying to say that we are talking present tense. I was talking past tense.

The CHAIRMAN. Well, then let me pin it down.

Mr. KENNEDY. By all means.

The CHAIRMAN. When is the last time that you saw the Whitewater files at the Rose Law Firm?

Mr. KENNEDY. In 1992.

The CHAIRMAN. When in 1992?

Mr. KENNEDY. February, I believe, would be the last time I saw them in 1992, but I don’t remember specifically.

The CHAIRMAN. So you saw them in February, Whitewater files, specifically?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. How did you happen to see them?

Mr. KENNEDY. I had them in my possession.

The CHAIRMAN. What did you do with them, because they are missing from the firm now?

Mr. KENNEDY. Mr. Chairman, I had them in my possession in furtherance of legal work I was asked to do by Mrs. Clinton.

As the Whitewater real estate—excuse me, Whitewater Real Estate Development became an issue in the campaign I was asked to

make them available to the campaign, which I did. And at some point they were physically delivered to the campaign in 1992.

The CHAIRMAN. Now, we are making some progress.

Mr. KENNEDY. I testified about that previously, Mr. Chairman.

The CHAIRMAN. Let me ask you about this. You saw them in 1992, you were working on it, you were given these files.

Mr. KENNEDY. I had these files in my possession in 1992.

The CHAIRMAN. Who did you turn them over to?

Mr. KENNEDY. I made them available on at least one occasion, maybe a couple of others, to a lawyer associated with the campaign named Loretta Lynch.

The CHAIRMAN. When you say you made them available and then at another time, will you explain, what do you mean by "made them available"? Did you make copies of them or did you turn them over physically?

Mr. KENNEDY. I did not do either one.

The CHAIRMAN. Would you tell me what you did?

[Witness conferred with counsel.]

Mr. KENNEDY. What I did is she came to the law firm, put her in a conference room.

The CHAIRMAN. This is Loretta Lynch?

Mr. KENNEDY. Yes.

The CHAIRMAN. Would this be about February?

Mr. KENNEDY. I believe so, Mr. Chairman, but I don't know for a fact.

The CHAIRMAN. Early February?

Mr. KENNEDY. Early, late February; sometime in February.

The CHAIRMAN. That comports with some things we know. Let's continue. What happened?

Mr. KENNEDY. Put her in a conference room, brought the files down, said Loretta, here they are. Left and let her do her job.

The CHAIRMAN. Let her copy them?

Mr. KENNEDY. I can't recall that she made copies at that point in time, but she may have. I can state with some degree of certainty she did not copy all of them, no, sir.

The CHAIRMAN. She may have copied some?

Mr. KENNEDY. She may have copied some.

The CHAIRMAN. At some point, she was done with her work and she left the office.

Mr. KENNEDY. That day? Yes, sir.

The CHAIRMAN. Well, I don't know, maybe it took a day or two days. How long did it take? Do you recall?

Mr. KENNEDY. As I say, Mr. Chairman, I don't recall if this was one time or several times.

The CHAIRMAN. You mean—

Mr. KENNEDY. She left the office and the files remained with me.

The CHAIRMAN. I am not asking over—these are not trick questions. I wanted to get to after Loretta Lynch came once or twice to review the files—you are not quite sure how many times, but she reviewed them—she left them in your possession; correct?

Mr. KENNEDY. Correct.

The CHAIRMAN. What did you do with them then?

Mr. KENNEDY. Held on to them.

The CHAIRMAN. Well, you held on to them all through 1992?

Mr. KENNEDY. No, sir, I did not.

The CHAIRMAN. Did there come a point in time when you gave them to someone else?

Mr. KENNEDY. No, sir. That did not. I will go on and give you the explanation so you won't have to ask follow-up questions. In—sometime in 1992, either February or March, I went away on a trip. My family came with me. I came back on a Sunday. There was a message on my answering machine from Mrs. Clinton from the night before, a Saturday. The message was that she was trying to get in touch with me because the Whitewater documents that I had in my possession needed to go to the campaign. She asked me to call as soon as I got the message. I immediately tried to get in touch with her. I could not. She was gone somewhere on the campaign trail. When I came to the firm the next day, Sue Cathey-Jones came to me and told me a story.

The CHAIRMAN. Who is Sue Cathey-Jones?

Mr. KENNEDY. She was a paralegal that was assisting me in the representation of the Clintons. The story was this—

The CHAIRMAN. And this is—around February, sometime?

Mr. KENNEDY. February or March 1992.

The CHAIRMAN. OK.

Mr. KENNEDY. She said that she had received a similar phone call from someone, I don't remember if it was from Mrs. Clinton or somebody else on Mrs. Clinton's staff, I do not know the answer to that. But she had received a similar phone calling saying that the Whitewater document files needed to go to the campaign.

She loaded up with her husband, came down to the firm to get the files and deliver them to the campaign. When she came they were gone. She, not knowing what else to do, then walked the approximate block and a half from the law firm to the campaign headquarters and found that the files had previously been delivered. But she did not know by who, and neither do I.

The CHAIRMAN. You never pursued who delivered the files?

Mr. KENNEDY. Mr. Chairman, I didn't have any reason to. They were at the campaign. That's where they needed to be.

The CHAIRMAN. Mr. Kennedy, I am not—you told—she knew obviously—Ms. Jones had worked on this matter so she knew where these files were?

Mr. KENNEDY. I don't know if Mrs. Clinton knew.

The CHAIRMAN. I don't mean Mrs. Clinton. I am saying Ms. Jones, your assistant?

Mr. KENNEDY. Yes, absolutely.

The CHAIRMAN. So I am just trying to establish that the files were in their normal place. Look, I think you have testified to this in depositions.

Mr. KENNEDY. That is correct, Mr. Chairman.

The CHAIRMAN. This is the first that I've been apprised of this, and I do not fault you in any way, but I am trying to put together a picture. I think this is the first time that I have learned of the manner in which the Whitewater files left the possession of the office and that's what I am attempting to find out.

Mr. KENNEDY. Mr. Chairman, I will help you any way I can. I will answer any question you got, but I did testify to this in deposition before this Committee on July 11.

The CHAIRMAN. Mr. Kennedy, I am in no way suggesting that you didn't. I brought it out because I have been apprised of that. What I am attempting to do is to get the picture, get the facts, that's it. And you see, again, it goes back to the question of what files, what documents. You see, the Whitewater documents, they are not at your firm anymore. They're not there.

Mr. KENNEDY. That's correct, Mr. Chairman. In 1993, they were not. In 1992, they had been.

The CHAIRMAN. I understand. Aren't we recapitulating everything? And you say, "Vacuum" and "the Rose Law files." I can understand incomplete, shambles, no good, insufficient information, but then when I see "Vacuum Rose Law files, Whitewater documents, subpoena," and "Documents never know go out," I have to come back to this situation where we heard testimony from your former associate and partner, Mr. Massey. And he, I think, in characterizing his testimony it would not be unfair to say that he was surprised and disappointed that the files were copied and given to the campaign. That was his—I am not talking about the Whitewater. I am talking about the files as it related to Madison, you see? That's why, this comes up the Rose Law files, in connection with—leads some to say, well, yes, that's true. And then those files disappear were it not for Mr. Massey's retaining a copy and then the manner in which the billing records turned up in the White House, again with Mr. Foster's notations, brings about a greater deal of confusion. What we're trying to do is piece this together.

Now sometimes it may be difficult for some, including the Chairman, to put this all together. To the extent that we put people through all this painstaking and excruciating detail, it is because there are so many blanks. Some may result from the passage of time and normal occurrences. I don't dispute that. Some may come by way of faulty memory, which is natural. Some may not come by those. We're attempting to rectify the inconsistencies and put this picture together. It's a job that we have to do. And sometimes it's not a pleasant one, but I want to thank all of you gentlemen—

Senator SARBANES. Mr. Chairman, I have a question.

The CHAIRMAN. Certainly. But I would like to thank all of you for your participation today. Now, I'm going to yield to Senator Sarbanes for his questions and his observations.

Senator SARBANES. Mr. Kennedy, first do you have those notes? Can we put that exhibit back up on the machine? The one that was just there?

Mr. BEN-VENISTE. 535.

Senator SARBANES. Mr. Kennedy, I listened to the Chairman very carefully and he moved from Whitewater documents to Madison files, and I want to come back to Whitewater documents because I want to be very clear about this. Now, your reference here is to Whitewater documents; is that correct?

Mr. KENNEDY. That is correct.

Senator SARBANES. And not to Madison files?

Mr. KENNEDY. No, sir.

Senator SARBANES. When you got the Whitewater documents, was there an information vacuum in those Whitewater documents?

Mr. KENNEDY. Absolutely, Mr. Chairman.

Senator SARBANES. And is that what you're referring to here?

Mr. KENNEDY. Yes, sir.

Senator SARBANES. So in the Rose Law files when you had the Whitewater documents there, there were missing—I think you said those files were a shambles or something?

Mr. KENNEDY. That is correct, Senator Sarbanes.

Senator SARBANES. All of the questions the Chairman put to you were put to you in depositions both back in the summer and again yesterday, were they not?

Mr. KENNEDY. That is correct.

Senator SARBANES. This is not new material. This is all material which the Committee has heretofore received from you. Correct?

Mr. KENNEDY. That's correct, Senator Sarbanes.

Senator SARBANES. Now on the Whitewater documents, who was your client in dealing with those Whitewater documents?

Mr. KENNEDY. Mrs. Clinton.

Senator SARBANES. So she was a client?

Mr. KENNEDY. Yes, sir.

Senator SARBANES. And under all the theories that have been advanced here today, she was entitled to those documents; correct?

Mr. KENNEDY. Yes, sir, she could tell me what to do with them.

Senator SARBANES. I gather she sought them because a lot of questions were being raised to the campaign and she wanted to get them to the campaign so they would be in a position to answer those questions; is that correct?

Mr. KENNEDY. That's my understanding, Senator.

Senator SARBANES. Now, I take it that the "never know go out" there refers to the thing you just recounted about how did the documents that were there when you went on vacation then move out of the firm; is that correct?

Mr. KENNEDY. To this day, I do not know, to this day, how the files got from the Rose Law Firm to the campaign. I don't know the answer to that.

Senator SARBANES. But in any event, if Mrs. Clinton wanted them to go to the campaign, that's where they should have gone. She's entitled to direct those files to wherever she chose to direct them. Is that not the case?

Mr. KENNEDY. Absolutely, Senator Sarbanes.

Senator SARBANES. All right.

The CHAIRMAN. Again, let me go to the point that Senator Sarbanes mentioned because there is confusion here. Look at that underline, the second, where it says, "Documents." You're referring to the Whitewater documents there?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. "Never know go out." Huh? Now what did you mean by that?

Mr. KENNEDY. Exactly what I testified about.

The CHAIRMAN. Tell me.

Mr. KENNEDY. Sir?

The CHAIRMAN. Tell me.

Mr. KENNEDY. I've done so. I'll do it again.

The CHAIRMAN. Yes.

Mr. KENNEDY. No one knew how the documents had gone out from the Rose Law Firm to the campaign.

The CHAIRMAN. But you knew they went to the campaign?

Mr. KENNEDY. Yes, sir, I did.

The CHAIRMAN. Wouldn't you note that those documents were at the campaign at this meeting?

Mr. KENNEDY. Mr. Chairman—

The CHAIRMAN. I see "Rose Law files," I see "vacuum," then I see—"never know go out," but they did go out, and you knew they went out at the direction of Mrs. Clinton. Isn't that true?

Mr. KENNEDY. Mr. Chairman, I—

The CHAIRMAN. But you did know they went out at the direction of Mrs. Clinton?

Mr. KENNEDY. I know they arrived at the campaign. I do not—

The CHAIRMAN. And you knew that Mrs. Clinton asked for them?

Mr. KENNEDY. I know that Mrs. Clinton was seeking them, yes.

The CHAIRMAN. OK. So that's why I have difficulty understanding why you would put "never know go out." If you said, "don't know who sent them over." But this says, "never know." Never know, what do you mean?

Mr. KENNEDY. Mr. Chairman, if you take notes, the word "how" is missing from that phrase. You never know how they went out. I don't know to this day how they went out.

The CHAIRMAN. You didn't say they went to the campaign. I mean, wouldn't you say where those notes were?

Mr. KENNEDY. Mr. Chairman—

The CHAIRMAN. That is followed by "quality."

Mr. KENNEDY. The quality of the files was horrendous. At this meeting I am certain that I told Mr. Kendall and the assembled group that they had gone to the campaign but I didn't know how.

The CHAIRMAN. There's no reference there and there's no reference that Mrs. Clinton asked for them. Isn't that unusual?

Mr. KENNEDY. No, sir.

The CHAIRMAN. It wouldn't be?

Mr. KENNEDY. No, sir.

The CHAIRMAN. If the First Lady had requested that these files be sent over to the campaign and you have vivid recall that she called you and you were gone on vacation and Ms. Jones went to look for them but they weren't there?

Mr. KENNEDY. Mr. Chairman, I was not trying to sort of recite in the notes this whole story. There was no need to. I wasn't asked to. We were moving on.

The CHAIRMAN. OK, I understand.

Again, I want to thank the witnesses and I want to thank the Ranking Member for giving us the opportunity to explore in the depth what we thought necessary.

We stand in recess until Thursday.

[Whereupon, at 6:28 p.m., the hearing was adjourned.]

[Appendix supplied for the record follow:]

~~James~~
~~Agustin~~
~~William~~
~~Henry~~
~~John~~
~~Edward~~
~~Henry~~

- ① Write the Facts - Amalgam, etc
- ② Try to find out who going on in Amalgam
- ③ Report to Report two one more
- ④ Meeting for Organizing with the Union
 - One Person

Come up in the Campaign

'95 Indicated in Arkansas - Mc. Dwyer

'92 Campaign - James up that was 50%
James by Mc. Dwyer
 '98 - Wash

Porter - Clinton had lost 8 in Wash
 - Wash to maintain two in detail
 - 368 500 at last
 - Mc. Dwyer 92,000 lost - anyone

HAC Representation of Modicum

- Not much activity representing people before
 Kansas 2 RLF letters Beverly Bennett

① Modicum

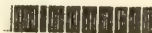
② PP of PPd RLF

Beverly Bennett - Proposed by rules to do the
Meeting after BS as the Can

Before any + strong support

Two more copies

! RLF - minimal printer
and reconstruction


 S 012517

Too slow of ...
Not again just yet - of ...

July 20th FBI received ... of ...
... of ... Judge ...
Hale

One day VF ...
Foster

Island for ... of Capital ... management - ...
David Hale directed

... now - ... for ...
... → ...
... & ... returned

David Hale: ... → ...
... filed 88/89
Two ...

'85/'86: ... of ...
... → ...
... Ministry

→ Clinton: ...
R.M. ... & ...
with ...

CSU - ...
... to ... USA -
... to ... of NYT - ...
Clinton

OH - ... story

McDougal also denied

II RTU ... w/ ... McDougal

Included - ... to 4 ...
4/85 ...

... Committee

3 ... in ...

... on McDougal
... by

... McDougal

get
\$3,000

██████████
S 012518

Conan, 1900
 Turned at Capital - Clinton says M.O. in
 cell for - 101 - legal guide help in

145th Train - foggy state
 Shipping Hall - Clinton says do you know
 what other men did with things I said

Clinton down say of 3 men
 M.O. down

no more in National

for Clinton

"I have did affidavit - very careful thing"

After Clinton filed for 1st -

Mayor Book of Clayton w/ McOuzel -

McOuzel in house - 1 567 - Motion
 JWF

McOuzel: "Papers of Atty" Not for days needed
 Get some down - and
 down

Only this of Commission through from from

A says for 5% down

for down →

June - for for

For return and not been filed

- 1/2 agreed how our proposed on delivery
 to McOuzel

- Then on City down

5 012519

June, 1992 - r r n..

Don't Omit from book to McOrge
Assume that has been filed

90/91

Brown, Rogers & Co

Foley Archer

Clinton Archer

3/4 Trinity 1/2

2/3, 1992 >

Ken 1

→ Blair content
then

→ discussed w/ V/F
Try to ~~have~~
as much as

Blair could have knowledge
could be source of money
to clear McO the possible etc

Nominal & Organization + Out of Ken Archer

- Jim Hamilton
- Walter Havelle
- Blair, Jim
- Hamilton Lynd - helped Hamilton
- Brown Thomas
- Charles Jones
- Jim Lynd for workpapers
- Betty Wright/Havelle ~~the~~ Oos
- Action ~~to~~ Oos to Oos knowledge

Corporate Records → Not to McOrge but
BW

HRC/ALC: - Letter Organized

Peter Oos: Mended

Land Oos:

Charles Jones -
Aut for work

██████████
S 012520

- Paula Original says that had with the copies of checks - the bank was generous on the matter
- David H. + H. - never got paid the good money

Competition pressure: WP/WSS/NT

WP - Company check
WW

David H. did not see a \$200,000 loan to him M.O. for M.O. says positive bond in Puerto Rico for IP purchased it from WW in 10/86

Two notes later - while to want to land Development Company

"In WW became" from H. - note

M.O.: told me from person that was here in WW - saying that gain would be offset

"Austin says me" SM raised up H. & register it → x for the book over C

Did not x for - the note

IP must WW become on the note

\$230,000 deficiency

Post:

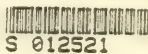
88 - Long up WW by end of the year
McDougal → said all the W

5755 Ozark Prin x note

27 later →

\$35,000

1972 Prin Prin



Phone sold → Probation Community for \$25,000

McDougal took \$25,000 as a Commission

Phone sold for Prin Prin - 417 from in house and then to Prin Prin Flying Service

non many....
 The sample

A/pa did maintenance 2/3, 1992

Write Under letter - returned to the top
 - Post Mc Larty & Amer. Drive, Colo

Add dfo - add maintenance - add process
 Long 40

RLF - Modern Gravity - Return at \$2,000
 per meter

~~\$3,000 - add to the~~

Add + Check down on
 WWC - paper
 to HMC

Bein
Equal

+ Belian that at
 per. request
 proposed of \$2,000
 1/4 of meter for

→ [15 meter for \$2,000 per meter - Return]
 see below

End of 86 → Award for hands
 → Mc Jagers say that one of
 Corp. hands to HMC

Done in Campaign → 86 - hands to HMC

RLF - Campaign Tim begin

Write by hand

- Betty brought her hands - took in
 Wot returned - hands for BW

Been at 2 Wt → Not Fair related to WW

- Took a new Capital Maintenance



Relate to w. jerry

GT deleted, del - Pres says that GT contains
investigation

RT - paper trying to get BC and TGT

- story of a regional by RT regarding
destruction of TGT - Check back
repeated

Vacuum Roach Fin WWC One - Regina

* Journal → Now know go out

~~Quality~~ Quality

*
Swan Mc Oogal:

* Mc Oogal's Aunt at Windsor - two different Charles

* IP for further release of the Relay

Examiners → Mc Oogal -

Charles to Paroch - parents want to know
for Charles copying - 85
under Oosterlin (?)

\$3,000 → 12,000 * Could all come from Charles Paroch
fund - & righted off from the
fund

Charles Paroch (Kari Paroch?)

\$1500 per election → \$3,000

Priming and a funeral



S 012523

~~Not a summary~~
Today - ~~the~~ last report

on had a notice but. receipt & explanation
 Filed a report 30 days after election → "Final Report"
 Would not be a report that not report the
 Evaluation
 Betty said "Omit how to discuss the loans"

300,000 short application form →

the last property → Property for \$750,000 to
 similarly that M.O. paid
 Mission loaned \$825,000 → 325,000 from
 \$825,000

\$500,000 in David Hale - put in SBIC
 then David Hale → ~~that~~ loaned the
 work to Sam 2/86 -

the 4/86 - ~~can~~ CUS to David

Could be that J&T is largest of the report

1986 - New State of Oregon

Flamingo - Collected 40 - now

15-13 - 2.5 ft. cur.

A. californica *solus* ←

and found - [McO also has a house at Madison Bush]

2.00 paid 83
7.20 84

found at Smiths Bay Paraguay

- pulled off in 1989

old times \Rightarrow Tithen Logos - prolapsed
HRC shells at inner join HRC get back
Pumps the tank and pumps out of the top -
parallel work

Wool — \$30,000 paid by Dec:

1,400 to ^{21,000} ~~provision~~ given out to pay off a debt owed by

Advice to Congress \rightarrow Activity for it is
treated

49,000 McDougall → detention payment (?)
- and in place

5/551 send NCI to Modern Book

E. 14. 151

2/2/52

29, 744.5 *Prunella* *sp.*
- *Prunella* *sp.* -
- *Prunella* *sp.* -
- *Prunella* *sp.* -

- Applied material to
McDougal land



S 012526

2/2/82

Be check in Personal Fund
 \$29,744. W. T. M&T
 - Not applied to 1981 loan
 - Payment of loan -
 Applied to Mc Oyster Note

Written on personal
 Asset

One year later - Atkinson Hill at Summit, Ark
 Lot 13 at same place

\$29,744 not properly stated for

Chris Work - has real estate office -

Ozark Lakes

He believes that a part owner - no
 paper / no written → my ownership
 distinct

Even for a new kind

1981 -- Mc Oyster desires to put out - deal w/
 Work

Ozark Air Service, Inc → Real Estate
 Air Charter

Work → require removing 24 lots
 for purchase of 35,000
 at Flippin

Anglene

* Anglene xpd in Glade → sold for 25,000

* taken by Mc Oyster as a commission
 Not

Newsham →

\$11,000 →

5 012527

How up - Wm. Wren

Own INS

WUOL - \$232,000

[Go to 654C:]

————— H —————→

Have other for \$1,000

Team is given - right is about / quantity /
value

1st Federal Candidate Drive Form
- Did not discuss but did not seem
expected

- Blair / Foster / Lynn - Get me out

McD buy it → He has to sell it

X action statement by Blair

McD → Buy

- Indemnity & other amounts Mc. Dargatz

- Tom Train: Clearly look & → LT Capital has
Could write off up to \$3,000 per
year
LTCC

→ Considered Rest of do that →

INS:

No Brian - \$1,000 Gain - Pay Taxes on \$1,000

12/72 -

Kendall
Engstrom
Nussbaum
Lindsey
Lyon
Eggleston
Kennedy

1. Gather the facts
2. Try to find out what's going on in Investigation
3. Respond to requests that are made
4. Strategy for dealing with the media
-One person

Came up in the campaign

'89 Indicted in Arkansas--McDougal

'92 Campaign--Issue up that were 50% owners w/ McDougal
'78-WWDC

Position: - Clintons had lost \$ in WWDC
Unable to substantiate this in detail
\$68,000 at least
-McDougal's \$92,000 lost-maybe

HRC representation of Madison - Not much activity representing
people before agencies
2 RLF letters Beverly Bassett

1. Madison
2. PP of pfd stock

Beverly Bassett - Responded w/ auth to do both
Recently appointed BB as Sec Cer

Brother early and strong supporter
Too much coziness

RLF - answered questions
Did reconstruction

Report: Clinton had taken the deductions that WWDC had not
taken
Tax advantage of \$2500
Not repay government yet-promise

II July 20th: FBI issued subpoena & took records of
municipal judge named Hale

Also the day that VF killed himself
Factor

5 012529

Asked for records of Capital Services Management--SBR'

David Hale - indicted

Inflate NW-qualify for additional loan authority-
borrowed securities and then returned

David Hale: proffer--false statement filed 88/89
Two instances

'85/'86: urging of politicians made loans not
repaid -- needed additional loan authority

Clinton: encouraged loan to McDougal and JGT wife
CSM made loans to JGT

Tried to sell to USA-
Then to Gerth of NYT - Denied conversation-Loan
Editors

DH - non-LR story

McDougal also denied

III. RTC referral w/r/t McDougal

Included a reference to 4 campaign checks
4/85 BC personally

Campaign Committee

3 checks written on Madison--all \$3,000

4th check on McDougal personally--signed by Susan
McDougal

Les Patten:

David Hale

Tunnel at Capitol--Clinton says MCD will call you-DH-hope
you'll help em

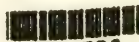
145 Street Trailer - Jogging Shorts

Shopping Malls - Clinton says do you know what bitch Susan
did with money-sed

Clinton denies any of 3 occurrences

MCD denies

now lunch in restaurant



Jeff Gerth

"Hale did affidavit - NYT backed away"

Steve Smith filed for BR

Bought Bank of Kingston with McDougal

McDougal in business with JGT - Madison
JWF

McDougal: "Powers of Atty" Not get info needed
Get more involved--wind down
Only lines of communication through Sam Huer

Arrange for 50% interest

Jim Blair

June - LR Acct

Tax returns had not been filed

VF agreed have Docs prepared and delivered to McDougal

Turn over Corp Records

June, 1991 - VF tax returns

Sent Directly from Acct to McDougal
Assume have been filed

90/91 Brown, Rogers & Co

Yoly Redden

Clintons Acct

1/4 Times

Huer

Blair Contact

Huer

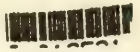
2/3, 1992

Have 1

Involved w/ VF

Try to arrange sale

Blair could have knowledge
Could be source of money
to allow McD to purchase stock



Nominal & respectable + Out of the Air

-Jim Hamilton
-Webb Hubbell

-Blair, Jim

-Loretta Lynch - Helped Reconstruct

-Susan Thomases
-Charles James

-Jim Lyon has workpapers

-Betsy Wright/Hubbell Docs

-Return Docs to Dave Kendall

Corporate Records - Not to McDougal bec BW

HRC/RLF: - Loretta organized Charles James
Acct for WW

Public Docs: Recorded

Loan Docs:

-Knowledge of referral - Gerth & Isikoff: Referrals include
campaign checks

- Pull deposit slip that had with it copies of checks - do know
who persons are who listed contributions

-David Hale + RTC - never got press good answers

WP - campaign checks
WW

David Hale did make a \$300,000 loan to Susan McD
Jim McD says purchase land in Pulaski Co from IP
purchased in name of WW in 10/86

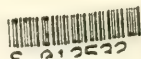
Two months later - WWDC to Great So Land Development
Company

"In WW because" Sam Huer - mistake

MCD: told one press person that were losses in WW -
hoping that gain would be offset

"Clinton's sign over" SM raised with HRC
rejected it - xfer to So Land Dev Co

Did not xfer the mtge



Ip sued WW because on the mtge

\$210,000 deficiency

Post:

88 - wrap up WWDC by end of the year
McDougal - sold all the lots

5/85 Ozark Air xaction

24 Lots - \$35,000
 1979 Piper Seminole

Plane sold - Madison Guaranty for \$25,000

McDougal took \$25,000 as a Commission

Plane sold to Seth Ward - WH father in law
 and then to Central Flying Service

+Trace through FAA in Oklahoma City - whose on
 the airplane

+ After did reconstruction 2/3, 1992
 Wrote Clinton letter - attached is accts rept

-Pat McCarthy & Assoc. Denver, Colo

+Add'l info - add'l schedule - add'l problems

Long Ver

+RLF - Madison Guaranty - Retainer at \$2,000 per month

ANN + Check drawn on WWDC - payable to HRC

Bernie + Believe that it believes prob. represents
 confirmed payment of \$2,000 # of months for 17 months

[15 months for \$2,000 per month - Retainer]
 Webb Hubbell

End of '86 - asked for records
 - McDougals say that all of
 Corp records to HRC

Issue in campaign - 86 - Records to HRC

RLF - Campaign Jim Lyons

Loretta Lynch

5 012533

-Betsy Wright had those Records - Took em home
 -Betsy Wright

WH retrieved - records from BW

Seen at WH - Sent files related to WW

Make a more complete reconstruction

Charles James - subpoenaed w/SBIC matter
 Relate to \$ going into WW

GJ indicted Hale - Press says that GJ continue investigation

RTC - people trying to get BC and JGT

- story of a referral by RTC regarding
 Indictment of JGT - Chuck Banks
 rejected

Vacuum Rose Law files WWDC Docs - subpoena

*Documents - never know go out
Quietly(?)

Susan McDougal:

*McDougals acct at Madison - two different checks

*IP file partial releases of the mtge

Examiners - McDougal

Charles Peacock - proceeds went from Charles
 for Clinton campaign - 85

made a donation (?)

\$3,000 - \$12,000 *Could all come from Charles Peacock
 Loan - \$ siphoned off from the Loan

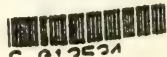
Charles Peacock (Ken Peacock?)

\$1500 per election - \$3,000

Primary and a general

Betsy Wright - if Clinton took out a loan
 not disclosed

Today - the last report
 Never had a match bet receipts & expenditures



Filed a report 30 days after the election - "Final Rept,"

-Would not be a report that not reflect these contributions

Detsy said "Didn't have to disclose the loans"

[\$300,000 what application from(?)]

Hale had property - Property for \$750,000 to somebody that MCD found

Madison loan \$825,000 - 325,000 from \$825,000

\$500,000 in David Hale - put in SBIC

then David Hale - loaned the

max to SM

2/86

4/86

- CMS to David Hale

Could be that JGT is target of RTC referral

1986 - New stmt of purpose

Flowerwood - collateral as a maker

Repay it - Promise to repay it

HRC wait to after the election

\$4761.33

1978- AG + HRC new lawyer at RLF

MCD may have approached Clinton - few things that could do

Buy - Subdivide - sell lots & get rich

No cash - 100% leverage

Bought from 101 River Development

202,000

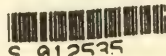
\$182,000 Citizens Bank in Flippin Personal Loans

\$20,000 Union National Bank in LR

- Great Southern Land Co - apparently asked to do certain work & speed \$ on raw ground

GSLC - credited w/ Advance to WW

\$34,160.72



Subdivided - Lots sold - Purchase or Contract

Paid out over time - Revenue stream
Would service lots and pay debt

1979 - WWDC formed
Assets xfd - Mortgage + Debt kept personally

Revenues used to reduce Debt - Money paid directly on Loans
for which Clintons obligors

- Ease of Admin

Lot sales were slow - 44 Lots
230 acres

HUD Interstate Land Sales Prospectus
Real Estate slows down

MCD & Clinton advance & to service debt

1981: MCD - put more \$ in than(?) year
W - buy a show home & put on one
of the lots

HRC - MCD loan from MBT - will buy
Lot 13 2.5 acres
Accelerate sales
(MCD also has a loan at Madison Bank)

Loan Serviced -

\$2,000 paid 83
\$7,200 84

Refinanced at Security Bank of Paragould

- paid off in 1989

Sold twice - Helman Logan - foreclosed
HRC gets back

HRC sells at small gain - Pays the tax and passes out of
her life - paid cash

WWDC - \$30,000 paid by HRC:

\$28,000 goes out to pay off a debt owed by
WWDC to Pesbrooke(?) -

Advance to Corporation - Actually how it is treated

6 012526

\$9,000 McDougal - Interest payment (?)
 - Check in Blank

5/85: Second note at Madison Bank
 8/11/91 \$20,744.65 President to
 2/2/92 Madison Bank - expecting applied to HRC Loan -
 - Applied instead to McDougal loan

8/81 - FY 92 McD borrows \$30,000 from
 Madison Bank
 BC check in personal(?) Acct
 \$20,744.65 to MBT
 -Not applied to HRC loan
 -Repayment of Loan-
 Applied to McDougal Note written on
 personal acct

One year later - refinances HRC at Security Bank

Lot 13 Interest Problem

\$20,744 not properly accted for

Chris Wade - runs real estate office - Ozark Lands

He believes that a part owner - no
 paper/no evidence - any ownership
 interest

Earn in of some kind

1985 - McDougal decides to get out - deal w/Wade

Ozark Air Services, Inc. - Real Estate Air Charter

Wade - acquire remaining 24 lots
 for assumption of \$35,000 (?)
 at Flippin

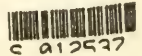
+ Airplane

*Airplane xfed in blank(?) - sold for \$25,000

*Taken by McDougal as a commission
 Not Reconstruction -
 \$11,000 -

Clinton not released until Fall of 1992

Blair up - Chris Wade



Owe IRS

[WWDC - \$232,000]

[Goes to GSLC:]

Sold stock for \$1,000

Term as governor - rept as asset/liability/neither

1st Federal Candidate Disc Form

-Did not disclose bec did not know
existed

-Blair/Foster/Lyon - get rid of it
McD buy it - HRC told to sell it

xaction structured by Blair

McD - Buy

-Indemnity & Hold Harmless McDougal

-Tax Time: Clearly lost \$ - LT Capital Loss

could write off up to \$3,000 per
year LTCG

--Concluded that if do that --

IRS:

No Basis - \$1,000 Gain - Pay taxes on \$1,000

12/92

6 012538

FAX TRANSMISSION SHEET

Date: 11/16/93 Time: 11:30 am

WARNINGS: PROTECTED UNDER THE PRIVACY ACT, 5 U.S.C., 552a. Unauthorized Disclosure Prohibited Under Penalty of Law. If Recipient is Not As Identified On Cover Sheet, Make No Further Disclosure And Telephone Transmitter For Instructions On Return Of Materials.

Be Aware Fax Machines Using Thermal Paper Produce An Unstable Image Which Will Deteriorate. Copy Messages Onto Plain Paper Prior To Filing As A Record!!

YOU MUST FILL IN ALL FIELDS

SUBJECT: Criminal Management Services Total Pages - Cover = 5

Sender's Full Name	Office/Room	FAX Number	Voice Number
TO: <u>Carl Eggen, Esq.</u>	<u>Ch. of the</u>		
<u>Seattle, WA</u>	<u>White House Judicial</u>	<u>(202) 456-1607</u>	<u>(202) 456-7900</u>
FROM: <u>John T. Spaula</u>	<u>SBA/CGC</u>	<u>(202) 255-6446</u>	<u>(202) 255-6713</u>
<u>General Counsel/SBA</u>			

Optional Message:

ATTENTION RECEIVING PARTIES

Immediately call 645646 at (202) 255-6713 if any FAX transmission is incomplete or if multiple copies are received.

☐ Check this box if you would like the receiving office to confirm receipt of this Fax Transmission.

When checked the receiving office should fax only this cover sheet back to the transmitting office confirming receipt.

Receiving Office, Firm or Division: _____

Received by: _____ Receipt Date: _____

Receipt Time: _____

- Neil Eggleston said the additional information is in SBA and is approximately 1 foot high. He has a call in to SBA to find out if it contains reference to either the President or Hillary. He can obtain a copy of the documents if it appears necessary but does not believe it is problematic.


S 011399

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416
(202) 205-6642

General Counsel

November 16, 1993

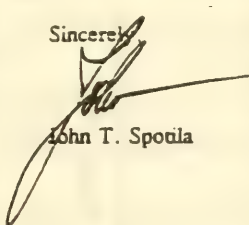
HAND DELIVERED

Neil Eggleston, Esquire
Associate Counsel
Office of the White House Counsel
The White House
Washington, DC 20416

Dear Neil:

Enclosed is a copy of Erskine's letter yesterday to Chairman LaFalce (with confidential attachments).

Sincerely,


John T. Spotila

JTS/s

Attachments

BRUCE LINDSEY CALL LIST
 NOVEMBER 16, 1993
 Page 11



S 012604

TIME	RESOLUTION	NAME/AGENCY	PHONE NUMBER(S)	MESSAGE
4:58 pm	IMPORTANT	Neil Eggleston		Has some Whitewater documents to go over with you. Will come by about 6:00 p.m.

GAO QUESTIONS FOR MRS. CLINTON

The White House Management Report describes, on page 9, the following:

"That afternoon [May 13], before Foster talked to Watkins about Peat Marwick, Foster went to see the First Lady on a matter unrelated to the Travel Office. The First Lady told Foster that she had heard about problems in the Travel Office. Foster replied that Kennedy was looking into it. Late that afternoon, she saw McLarty and inquired about the situation in the Travel Office. Foster subsequently informed her that Peat Marwick was going to conduct a review of the Office."

In our interview with Mr. David Watkins, he stated that (a) on May 14, Mrs. Clinton (through Mr. Foster) had expressed an interest or awareness of the situation in the Travel Office; and (b) that it was Mr. Watkins' understanding that Mr. Harry Thomason asked to have an update on the situation. Mr. Watkins reported that in a subsequent conversation on the same day, Mrs. Clinton (a) mentioned the 25 percent (White House) staff reduction goal; (b) said it would be good to have "our people" working in the Travel Office; and (c) said that the administration had been criticized at the time for being slow in filling positions, and had delayed too long. We also note that the White House Travel Office Management Review contains a copy of a memorandum from Mr. Watkins to Mr. McLarty which was marked as "cc" to Mrs. Clinton, and which describes the steps taken to review the Travel Office matter and the decisions made to remove the employees and carry out the functions with other staff.

We respectfully request Mrs. Clinton's official response to the following questions:

1. How would you describe and to whom would you attribute the origin of the decision to remove the Travel Office employees?
2. How would you characterize your role in that decision?
3. Did you ask or direct that any action be taken by anyone in regard to the White House Travel Office?
4. Is Mr. Watkins' characterization of his discussion with you, as recorded by us, accurate? If not, how would you describe the discussion?
5. Did you participate in any other discussions with White House staff or Mr. Thomason concerning the White House Travel Office matter during the period leading up to the removal of the Travel Office employees on May 19, 1993? If so, when and how would you describe those discussions?



THE WHITE HOUSE
WASHINGTON

April 6, 1994

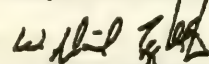
Nancy R. Kingsbury
Director
Federal Human Resource Management Issues
General Government Division
General Accounting Office
Washington, D.C. 20548

Re: GAO Requests for Responses to Written Questions.

Dear Ms. Kingsbury:

Attached please find written responses to the questions that GAO posed to Mrs. Clinton.

Very truly yours,



W. Neil Eggleston
Associate Counsel to the President
(202) 456-7901

RESPONSES TO QAO QUESTIONS FOR MRS. CLINTON

1. Mrs. Clinton does not know the origin of the decision to remove the White House Travel Office employees. She believes that the decision to terminate the employees would have been made by Mr. Watkins with the approval of Mr. McLarty.

2. Mrs. Clinton was aware that Mr. Watkins was undertaking a review of the situation in the Travel Office, but she had no role in the decision to terminate the employees.

3. Mrs. Clinton did not direct that any action be taken by anyone with regard to the Travel Office, other than expressing an interest in receiving information about the review.

4. ~~Mrs. Clinton does not recall this conversation with the same level of detail as Mr. Watkins.~~ She recalls that on Friday, May 14, she had a very short telephone call with Mr. Watkins. Mr. Watkins stated that Mr. Foster had mentioned that Mrs. Clinton was interested in knowing what was going on with the Travel Office. Mrs. Clinton knew that Mr. Watkins was out of town. Mr. Watkins conveyed to her that even though he was not in Washington, his office was taking appropriate action.

5. Mrs. Clinton has a general recollection of having conversations with Mr. Foster and Mr. McLarty about the Travel Office situation prior to the termination of the Travel Office employees. She has no specific recollection of any particular conversation with Mr. Thomson on this issue at that time.

Mrs. Clinton believes that she spoke with Mr. Foster about the Travel Office before her telephone call with Mr. Watkins. She also believes that she had a very brief conversation with Mr. McLarty sometime before she spoke with Mr. Watkins. In that conversation, she told Mr. McLarty that she had heard about problems in the Travel Office and wanted Mr. McLarty to be aware of it.

Mrs. Clinton does not recall seeing the May 17 memorandum from Mr. Watkins to Mr. McLarty until after the Travel Office employees were terminated.

Abroad at Home

ANTHONY LEWIS

Bricks Without Straw

From the moment Bill Clinton took office as President, Republicans set out to destroy his legitimacy. They methodically attacked his honor,品行, through charges about the long ago land deal known as White Water.

Three years and innumerable investigations later, Mr. Clinton has not been shown to have done anything wrong in Whitewater. One charge after another has evaporated.

But the Whitewater accusation remains grating on Senator Alfonse D'Amato, the New York Republican who chairs a committee on the subject, announces that a document will show something terrible. The press breathlessly reports that . . . and fails to point out that the document, when produced, is not what Senator D'Amato said it was.

The D'Amato performance is right out of the Joe McCarthy book. From innuendo and guesswork, but there is a big difference. The press continued to Senator McCarthy and checked out what he said. On Whitewater, the press too often seems eager to complete the accuser's charge as a complicity of the accused.

The performance of the press is especially troubling. Some of the coverage of Whitewater reads as if the reporters or editors were committed

to finding something wrong, as if they had an investment in the story. Whitewater is a hard subject for those of us on the outside to discuss. If we say that I've decided to bank, the expert replies, "What about I've decided?" Only the obsessed have the right at their fingertips.

But here are two examples of what seem to me to be overwrought charges.

The other day copies of misleading records from the Borg law firm in Arkansas, in which Hillary Rodham Clinton was a partner, were found. Mrs. Clinton had said she did "minimal" legal work for Madison Guaranty, a failed savings and loan owned by James M. Douglas, the Whitewater developer. Senator D'Amato said the records raised "serious questions" about Mrs. Clinton's spade of "conduct that borders on contempt, obstruction and false statements."

The records actually showed that over 15 months Mrs. Clinton billed Madison \$6,000 for 60 hours of work, less than an hour a week. For a sizable law firm, that was a small account.

Senator D'Amato then held a lengthy hearing with Richard MacIver, a lawyer in the Borg firm, as the witness. The question was whether

he or Mrs. Clinton had brought Madison Guaranty's business to the firm.

Anyone who answered by "White Water" was not determined to use it as a club, would surely look at that beating in amazement. Why in God's name should public money be spent to ask who brought a small amount of business to an Arkansas law firm years ago?

Then there is the case of David

The Whitewater obsession.

He, a former municipal judge in Arkansas who has been charged with it, and he told the U.S. Attorney that he would provide information on President Clinton if he were proven innocent. Mr. Casey said he would have to plead guilty to one felony. He refused, and then went to the press with a build-up charge against the President.

Republicans suggested that U.S. Attorney Casey was protecting Pines

Isent Clinton, but no responsible prosecution would make such a deal unless the suspect agreed to plead to a serious charge and unless he called first, with Mr. Hale would not. Then Mr. Hale has pleaded guilty to two felonies on charges brought by the independent Whitewater counsel, Kenneth W. Starr.

I have hardly been an ardent admirer of Bill Clinton. I have written critically about his performance as President, on Bosnia and other issues.

But personal attack is another thing. When it is carried to the extremes it has been in Whitewater, it is not just Mr. Clinton who suffers. It is the country.

That's part of the territory. The Clinton said in her interview with Barbara Walters on ABC television in other words, anyone in public office these days can expect to be vilified. The President, confirming that the cost of defending himself had left him essentially bankrupt, said in his press conference last week that he had no complaint.

But do we really want to be that kind of country? It is time for us to step back and say. Some of this is get in line to the public business. Enough is enough.

Nov- 10- 93- Wed. 10:27

P. 01

DEK 11/10/93

Draft

Chronology

Aug. 2, 1978: Clintons & McDougals purchase 230 acres in Marion County for \$202,611.20 (all financed)-- mortgage loan of 182,611.20 from Citizens bank and Trust Co. in Flippin (now Ozark National Bank), Personal loan to JBM and WJC of \$20,000 from Union National Bank of Little Rock.

Nov. 1978: WJC elected governor (1st term)

April 1979: Clintons take interest deduction of \$10,131 for 1978

April 1979: Clintons obtain \$8,000 loan from Bank of Cherry Valley

June 18, 1979: Whitewater Development Company Inc. (WDC) incorporated (50-50 ownership) corporate purpose was develop property and sell residential lots on escrow contracts.

Sept. 30, 1979: Clintons and McDougals convey the 230 acres to WDC (mortgage obligation not transferred-- remained with the 4, joint several; personal loan- not transferred)

April, 1980: Clintons may have taken \$2900 interest deductions in 1979 for loans (out of total interest deduction of \$11,749)

Aug. 23, 1980: HRC writes \$9000 check with payee blank (on her account) -- this was claimed as interest deduction on 1980 tax returns -- may have been principal reduction (only 3rd party

Nov 10-93 Wed. 10:27

P. 02

endorsements is stamp of Citizens Bank & Trust) -- This looks like a reimbursement by Clintons to McDougals for a previously unreimbursed interest component of \$11,032.50, so interest deduction would have been proper.

Dec. 16, 1980: HRC buys lot 13 from WDC for \$30,000 via secured loan from Bank of Kingston, later Madison Bank and Trust (MBT)

Dec. 26, 1980: WDC deposits \$30,000 in its accounts at MBT, which had balance of \$456 (Wash. Times, 11/4/93)

Dec. 9, 1981 : Lot 13 sold to third party Hilman Logan on escrow sales contract for \$27,500 (\$6,000 cash and assumption of \$21,500 note) --WDC collects contract payments & make payments to MBT, reducing the mortgage loan

Feb 1982: Marlin Jackson, owner of Security Bank of Paragould, appointed State Banking Commissioner by WJC.

1982: JBM buys Madison Guaranty Savings & Loan (MGS&L) (2/29/92 chron; "Late 1982." -- Washington Times, 11/5/93)

Sept. 30, 1983 HRC's \$30,000 loan on lot 13 at MBT is refinanced at Security Bank of Paragould at lower

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P. 03

interest rate at amount of 20,800
(MBT's mortgage release recorded 10/19/83)

1984: JBM claims WJC asked him to send "about \$2000 a month" in business to HRC (LA Times, 11/7/93)

1985: JBM sells MBT (2/29/92 chron)

1985: Madison Marketing (McDougal family business -- derived income from S&L) provided funds to Whitewater to make \$7,322 payment on loan to WJC from another bank (NYT 11/2/93)

April, 1985: HRC confirmed in writing during campaign she met with JBM

April, 1985: JBM gives Clinton Campaign (1984) \$3000 -- it was \$35,000 in debt (Bruce Lindsey, Wash Post 10/31/93); MGS&L hosts Clinton fundraiser at the Main Street office -- at least \$12,000 in MSG&L checks (\$9,000 in cashiers checks) wound up in campaign coffers (NYT 11/2/93)

April 30, 1985: HRC represents MGS&L before State Securities Commission -- letter to Rose Law Firm to Securities Commission's Charles Handley says further info to be provided by HRC or Richard Massey.

May 4, 1985: Assets of Whitewater sold to Ozark Air Service, Inc. (24 Lots) in return for Ozark Airs

Nov.-10-93 Wed 10:29

P. 04

Assumption of \$35,000 of Mortgage indebtedness at Citizens Bank & Trust in Flippin an 1979 Piper Seminole (later sold for \$25,000, which went to McDougals as a "commission")

May 14, 1985: Securities Commissioner Barbara Bassett Schaffer grants permission for MGS&L to sell preferred stock and form a brokerage service subsidiary ("Dear Hillary" letter?)

July 10, 1985: Richard Massey of Rose firm writes States Securities Commission on behalf of MGS&L it should address questions on brokerage sub. to either HRC or him

Nov. 7, 1985: WDC check for \$7,323 signed by JDM used to pay principal on interest on WJC "personal" loan at Security Bank of Paragould (payment on account described as #957-585, Bill Clinton)(Wash Times, 11/4/93)

End of 1985: Charles James leave accounting business & terminates work for WDC

Feb 1986: Hale claims he meets with WJC and JBM who requests a \$150,000 loan (LA Times, 11/7/93): Hale claims MGS&L finances land deal for more than land is worth (loan loss of \$672,000), getting Hale the money to loan to Master Marketing (get cite)

Apr 3, 1986: \$300,000 loan from Capital mgmt Services Inc. to SHM d/b/a Master Marketing

Nov 10-93 Wed 10:29

P. 05

July 11, 1986: FHLBB & Arkansas S&L Board remove JBM and SHM from MGS&L Board (Post Nov 2.)

Oct. 1986: Whitewater buys 810 acres from Intl. Paper for \$555,000 -- Wash Times claims that "record shows" \$110,000 of the \$300,000 used as down payment 11/4/93)-- IP agreed to finance balance (JBM admits \$110,000 of the loan was used to purchase the land -- LA Times, 11/7/93)-- after purchase "records show" that Master Marketing changes its company description to a real estate venture (Wash. Times, 11/4/93)

Nov 14, 1986: JBM status report to WJC & HRC -- states all property has been sold" (get this document)

Dec, 1986: Property transferred to another McDougal entity-- but Whitewater still on Mortgage (Post, 11/2/93)

1987: First purchase of lot 13 (Hilman Logan) defaults

Mar 36, 1987: Clintons execute a continuing guaranty jointly and severally, of the original mortgage acquisition loan at First Ozark National Bank in Flippin (was Citizens Bank and Trust Co.)

1987: JBM says he gave all Whitewater records to WJC (Post 11/2/93) ("late 1987"; wash Times, 11/4/93)

1988: JBM indicted for fraud in connection with MGS&L -- charged with arranging sham deals to generate \$75,000 in bonuses for himself and using funds of MGS&L to buy land through Master Developers

Nov 10-93 Wed 10:30

P. 06

Sept 14, 1988: HRC purchases lot 13 from B/R estate to Hilman Logan for \$8,000 to B/R trustee and assumes remaining loan balance of 14,118 at Security bank of Paragould

Oct 31, 1988: Warranty deed signed by Clintons only transferring lot 13 to Lauramoore (recorded on November 28)

Nov 25, 1988: Letter from Earl Stafford (Ozark Realty) -- Lot 13 is sold for \$27,500 (gain of \$1,742) to John and Marilyn Lauramoore (Lyons report says \$1,640)

Nov 28, 1988: HRC letter to JBM & SHM asking for POA: " We are trying to sell off property that is left and get out from under the obligations at Flippin and Paragould

1989: MGS&L S&L fails

June 7, 1990: JBM acquitted of bank fraud -- case focused on bonuses & profits he earned on re deals involving the development sub, Madison Financial Corp. (Post 10/31/93)

March 8, 1992: Jeff Gerth NYT articles "Clinton joined S&L operator in Ozark Real Estate Venture"

March 17, 1992 Illinois Primary

March 23, 1992: Jim Lyons report released: Clintons described as passive shareholders" -- "at all material times the McDougals or their agents exercised

Nov-10-93 Wed 10:30

P. 07

total control over the management and operations of the corporation and its investments"

Dec 22, 1992: Assignment of Interest/Stock purchase -- WJC & HRC"s 50% in WDC to JBM for \$1,000 cash (payment by check dated Dec 24, 1992 from Sam Heuer trust account)

June 23, 1993: Yoly Redden sends to Jim Blair fed & state income tax returns for WDC for FY's ending in 5/31/90, 5/31/91, 5/31/92 and Arkansas franchise tax report for 1992, with a transmittal letter to JBM dated June 18, 1992

July 21, 1993: Offices of Capital Mgmt Services Raided by FBI -- Vince Foster suicide

Sept 23, 1993: Hale makes claims in Arkansas Democrat- Gazette article

Sept 1993: Hale indicted with two others -- charged with defrauding SBA by illegally parking \$800,000 in Capital Mgmt. Services to secure \$900,000 SBA loan

BRUCE LINDSEY CALL LIST
 SEPTEMBER 17, 1993
 Page 5



TIME	RESOLUTION	NAME/AGENCY	PHONE NUMBER(S)	MESSAGE
------	------------	-------------	-----------------	---------

4:01 pm		Bill Burton		Needs to talk to you about a Jim McDougall problem Jim Blair
---------	--	-------------	--	--

2:30 pm -

Jim Blair

- McDougall called Hume to tell her that
Hale had been to see her - McD told
Hume that Hale had tried to get her
to fabricate story about BC - "I got"

- Galt tried to get ^{Sam} Hume to tell him
where McDougall was - Hume wouldn't

^{Hume}
- But Rogers - asked further indicated - against
Hale, not McD

→ Agreed: we would prepare / McD would file

Copy to Records → done →

490-92 - tax return

60 days ³⁰ / 90 days

2nd
call

See Hume Called Charles Rely -

Letter of transmittal → for account of -
Date 2 or 3 days before the returns are
filed →

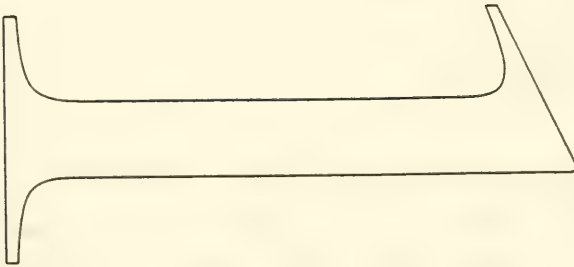
Returns: Prepared for ^{McD} ~~Sam~~ to file & give
to McD ~~Sam~~ → doesn't know where
McD. filed returns

Fletcher Jackson - in charge of case → minority
held

McD. might become target & →

Blair

Heard that \$300,000 had been deposited in McD's
^ account - jumped pretty high



407

7124

37

MEMO

July 11, 1985

TO: John Latham
FROM: Jim McDougal

1. This is probably a good time to take in some 5-year money cheap. Let's discuss rates.
2. I need to know everything you have pending before the Securities Commission as I intend to get with Hillary Clinton within the next few days.

JM/ss

10255

1 MG 0000854 1

1592 Audit

*

Agmt to discuss Reporting
of income from WW

2010 Basis → Sale of WW shares
Not have reported enough income →
no problem

*

S 012595

11/4/93

Jones, Bob
 Kowalski, David
 Brown, Mike
 Smith, Bob
 Niles, Linda
 Newman, Steve

*

Report - Bob Jones - Audit

Formal Request - Faxed

① How Sales Proceeds

(A)
 (B)

*

③ 7000 WW

Could be done w/
 him

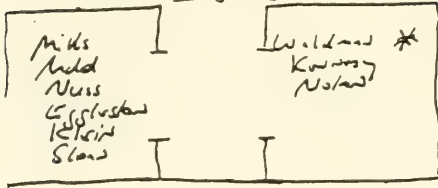
*



S 012596

1/20/84

James Connell →
Paul Bagala →



+ Northern to high Congress

② Chronology of events: Nick Register

- + Documentary Reading
- + Kessler
- + Principles
- + Brown History
- + Walter

③ Each day - last case → go through clips and come up w/ answers

- + Documentate stuff in the clips
- Address
- + New things:
- + Go back w/rt stuff been written

→ + Produce a book to me?

→ + Organized with reference: + Stefan Engel

+ History

+ Northern

④ Special Assignments w/rt culture
James



S 012597

~~Under the same name~~

~~②~~

- ④ Kudrya - Potential public presentation
 Possible ~~potential~~ assistance from USSR
 - Potential release of documents ~~from~~ USSR

⑤ Lukas - "Op Ed Piece"

+ Answers to Senator Jones

+


 S 012598

M E M O R A N D U M

TO: Jeff Glantz, New York Times
FROM: Beverly Bassett Schaffer
RE: Madison Guaranty Savings and Loan
DATE: February 25, 1991

On February 14, 1991, I spoke with you by telephone concerning the above referenced Arkansas savings and loan that was closed during my tenure as Arkansas Securities Commissioner and Savings and Loan Supervisor. We discussed a number of items during our telephone conversation, many of which I was unable to fully address at that time due to my lack of specific recollection of matters that occurred as much as seven years ago.

Since then I have reviewed my personal and work calendars from 1985 and 1986, reviewed certain documents pertaining to Madison Guaranty and spoken with Charles Handley at the Securities Department, who participated in each and every decision concerning savings and loan matters during my tenure. I believe it is important that I give you the benefit of my personal knowledge concerning these matters.

In 1984, I was a practicing attorney with expertise in securities law. I was a member of the Mitchell Law Firm in Little Rock which I had joined in 1978 as a law clerk and later became an associate and partner. In 1977, while I was a law student, I

Memo to Jeff Girth
February 25, 1991
Page 1

worked full time for a year for Bill Clinton when he was serving as Attorney General. I had first met Bill Clinton in 1974 when I worked as a volunteer in his first campaign for elective office as a congressman (he lost). My brother, Woody Bassett, who is also a practicing attorney in Fayetteville, is a long time close friend and supporter of Bill Clinton's and has been active in Democratic party matters for years.

Sometime in mid-1984, I learned that Lee Thalheimer, a friend of mine and law school classmate of my brother's, planned to leave his post as Securities Commissioner. I discussed with my brother my interest in seeking the job because I wanted to build my expertise as a securities lawyer and, for a variety of reasons, I was not happy at the law firm. I know that my brother discussed this with Bill Clinton and his then Chief of Staff, Betsy Wright, several times in 1984 and I did as well.

In early January, 1985, I met with Governor Clinton at the Governor's Mansion to discuss in general the kinds of issues facing the securities industry at the time. It was a lengthy meeting and I do not recall any mention at all of savings and loans. A few days later, the Governor called me at home to tell me he planned to appoint me as Securities Commissioner. He asked that I not say anything about it until he had had a chance to call the other

Memo to Jeff Gorton
February 15, 1991
Page 1

persons who had asked for the job to personally tell them of his decision. Later that same week, on Friday, January 13, 1985, Joan Roberts, who was the Governor's press secretary, called me at my law office to tell me that the Governor planned to announce my appointment that day and asked me to get a resume and picture to the Governor's office right away. Members of my law firm often asked me about the appointment and I declined to share with them my conversations with Bill Clinton. On the day it was announced, however, I told the members of my law firm, including John Selig, of the Governor's decision. I believe this is how John Selig learned of my appointment. I do not believe he learned about it from Jim McDougal and I am certain I knew of the appointment long before John Selig.

I do not believe Jim McDougal, a man I have never met, had anything to do with my appointment. If he ever claimed he did, I believe he was blowing the usual hot air that pollutes the environment in the state capital. I would have paid no attention to John Selig or any other member of my law firm who claimed to know anything about my appointment. I did not seek and in fact discouraged involvement by the law firm in my appointment. There are many reasons why I felt that way but suffice it to say that I sought the appointment for myself, not for the law firm. I did not return to the firm when I left the Securities Department in 1991.

Memo to Jeff Girth
February 25, 1992
Page 4

During 1984, when apparently Jim McCougal was claiming he influenced my appointment (or at least someone is now saying he did), he was deeply involved in a business transaction with Sheffield Nelson. It involved Madison Guaranty Savings and Loan. I believe Charles Handley is aware of the transaction and there may be a public file at the Securities Department. I mention this only so that you know why I believe that Sheffield Nelson was and is in a position to advance, with some degree of specificity and believability, a distorted and calculated version of the events and circumstances surrounding my appointment.

I do not wish to enhance my credibility by dumping on someone else. But I must tell you that the relationship between Sheffield Nelson, Jim McCougal and Madison Guaranty in 1984 - not mine - is the one that warrants scrutiny. My predecessor, who was a Republican appointee, was serving as Securities Commissioner at the time. He approved a risky, speculative real estate development project at a time when the savings and loan was in dire need of capital to support such a project. The savings and loan was not required to first increase its capital base and take steps to meet its minimum net worth requirements before receiving approval to proceed with the development project. Without the necessary capital base, the savings and loan would be unable to absorb potential losses from its direct investment in the venture. I

Memo to Jeff Glavin
February 25, 1993
Page 5

believe that the venture may have been approved, at least in part, based upon the personal financial strength of the outside investors, rather than the institution. I believe that the venture later proved to be a significant financial drain on the institution.

Throughout 1981, both state and federal savings and loan regulators were pressuring savings and loans to raise capital. Many, including Madison Guaranty, were not meeting their minimum regulatory net worth requirements. Indeed, Madison Guaranty was operating under a Supervisory Agreement with the FDICB which required them to take steps to bring the association into compliance with those requirements. When our Department was approached by the Rose Law Firm in 1983 about a plan for Madison to issue preferred stock, I believe that Charles and I both felt that the savings and loan was making an effort to address their obvious lack of adequate capital, but we had some concerns about whether the savings and loan laws authorized the issuance of preferred stock. Charles Handley is not an attorney and although I relied heavily on his advice on savings and loan matters, I believed this matter was a very narrow legal issue that had to be treated as such. I am confident after looking at the statutes again this week, that our interpretation of the law was absolutely correct. Assistant Commissioner Nancy Jones agreed with the Rose Law Firm's

Memo to Jeff Glick
February 15, 1992
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position and I believe there are hand written notes of hers (N.J.) in the file to this effect. Although we officially agreed that state law authorized the issuance of preferred stock, we cautioned the savings and loan that it should seek the assurance of the Federal Home Loan Bank Board (FHLBB) of Dallas that the preferred stock, if issued, would be considered "permanent capital stock" for regulatory net worth purposes. Under RAP accounting, the FHLBB had certain rules that differed from GAAP. There are notes in the file from Mary Jones (who is a C.P.A.) to me indicating she believed the preferred stock Madison Guaranty intended to issue would be "permanent capital stock" for FHLBB purposes.

With regard to the brokerage services subsidiary, I specifically recall that Charles and I agreed that we would not consider approving the activity unless the savings and loan first raised the capital to bring the savings and loan into compliance with its net worth requirements. Charles wanted to use their request for approval to engage in brokerage services as leverage to insure that they would proceed forthwith to raise the badly needed capital. Although we were not persuaded that a private market for savings and loan securities of this sort existed at the time, we could not be certain. If Madison Guaranty was able to raise the capital, many of our concerns about the safety and soundness of the institution would be alleviated. As such, we decided to condition

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our approval of an application for a service corporation to engage in brokerage activities on the savings and loan first raising the capital to bring them into regulatory compliance. (A "safe harbor" provision was added to the state savings and loan laws by the legislature in 1989. It is this provision that clearly allowed state chartered savings and loans to engage in any business practice or activity authorized for a federally chartered savings and loan. In the mid-1980's, federal savings and loans were allowed to engage in securities brokerage activities. Assistant Commissioner Nancy Jones believed that the savings and loan could engage in this activity without our prior approval. Charles Handley and I took the position, however, that it was not a pre-approved activity and that the savings and loan could not do it without our prior approval. Thus, we gained the necessary leverage to insist on an immediate infusion of additional capital. I

Madison Guaranty apparently abandoned the effort to issue the preferred stock shortly thereafter, although I do not specifically recall being told the reasons. Before the savings and loan could have offered or sold the preferred stock it was required by the state securities laws to file a disclosure document with the securities registration division of our office. The transaction would have been subject to our review and approval as to the adequacy of disclosure to potential investors of the preferred

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stock. No filing was ever made. Since we had given the savings and loan only until December 31, 1985 (a matter of months) to raise the capital and they were not able to do so, the savings and loan never engaged in brokerage activities.

I fail to see how our handling of these matters placed depositors at risk or furthered the demise of Madison Guaranty in anyway. Obviously, if the savings and loan had been able to raise the capital, both state and federal regulators would have been relieved of a major source of concern. If not, the savings and loan would not engage in brokerage services for even a day. In fact, it did not.

I do not believe that the involvement of the Rose Law Firm in these matters influenced the Department's decisions in any way. My staff was involved deeply in the decision making process and each decision had a statutory basis. Our Department acted neither favorably toward the savings and loan, nor arbitrarily or capriciously. We acted reasonably.

In the spring of 1986, we had numerous conversations with the FHLBB of Dallas about Madison Guaranty. We were all quite concerned about matters that had surfaced during the most recent examination of the institution. Its net worth was further eroding.

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Far worse, however, were the findings of self-dealing and insider abuse. The Board of Directors of the institution appeared to be completely dominated by Jim McDougal. The service corporations (none of which were approved during my tenure) were draining the institution. It was during this time that the FHLBS sought our advice and approval as to the proper regulatory course of action. We all agreed that it was critical to remove Jim McDougal from the institution. It was decided to seek the voluntary ousting of McDougal first by means of a Consent Cease and Desist Order. Absent consent, the FHLBS would seek a formal removal order, with the State's full agreement and consent.

On July 11, 1986, Charles Handley and I flew to Dallas to meet with the FHLBS and the Board of Directors of Madison Guaranty (the meeting was originally scheduled for July 24, 1986). Walter Faulk was the Principal Supervisory Agent in charge of the meeting and Karen Bruton attended the meeting on behalf of the Enforcement Division of FSLIC in Washington, D.C. The Madison Guaranty Board had been summoned to Dallas to discuss the findings of the examination. Jim McDougal did not attend. John Selig and Bruce Speed attended the meeting on behalf of the Madison Board. In June, 1986, John Selig had asked our Department for forbearance on certain concerns we had raised with the association about its direct investments in its service corporations. The savings and

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Loan had earlier promised to address the matter by April, 1986. We did not respond to the June, 1986 request because we knew then that by July, 1986, McCougal would be gone and the issue would be moot.

At the meeting, we jointly confronted the Board with the findings of self-dealing and insider abuse (there are handwritten notes of mine in the file from the July 11, 1986 meeting). The Board was presented with a Cease and Desist Order that, among other things, called for the Board to fire Jim McCougal and other family members. (A copy of the Order is in the files of the Arkansas Securities Department.) It was a long and confrontational meeting. The Madison Guaranty Board members and their lawyers appeared stunned. One of them, Steve Guffman, an attorney, acted very responsibly and soberly. He indicated the Board would likely consent to the entry of the Cease and Desist Order. John Selig indicated that the Board would cooperate but would like a few days to review the order and work on minor revisions. I believe the order was entered the last week in July, 1986. At the same time, the savings and loan was placed under another Supervisory Agreement that required approval from OARBS of every subsequent decision of any significance.

For a few months, Steve Guffman essentially ran the institution. Later, Tommy Tranchesi was hired by a new Board of

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Madison Guaranty and approved by the Dallas Bank to bypass the institution until FSUC found some money to pay off depositors. In 1987, we received an annual audit for calendar year 1986 reflecting that Madison Guaranty was insolvent. Shortly thereafter, we asked that the institution be transferred to the FSUC on the grounds of its insolvency. There can't be anyone left in America who doesn't know by now that FSUC was dead broke in 1986. Madison Guaranty was the least of their problems. Further, since Jim McDougal had been removed from the institution, there was little harm done in letting it sit, as did hundreds of others, while new management searched for ways to salvage its worthless assets.

I believe that my office did everything possible during my tenure to deal with the savings and loan disaster in general and with Madison Guaranty in particular. State law requires that an institution that is insolvent or operating in an unsafe or unsound manner be placed in receivership and that the FSUC be appointed the receiver. If FSUC refused (which we were told it would on several occasions), we could have asked the court to appoint another receiver. However, there would be no depositor payoff and we were obviously worried about triggering panic around the state among depositors of both state and federal savings and loans. State law does not provide for the removal of officers and directors of savings institutions. Federal law does, however, and

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We depended heavily on the cooperation of the FHLB of Dallas to exercise this authority. I believe we worked well with the FHLB in the case of Madison Guaranty and moved quickly to remove the source of the problem.

In the case of other state chartered savings and loans, we fought bitterly over the timing and manner of their disposition. We repeatedly asked the FHLB to transfer insolvent institutions to the FSILC. Indeed, the files at the Securities Department reflect a letter in 1987 from me to the Director of FSILC in Washington, D.C. pleading with the FSILC to place three institutions, including Madison Guaranty, in receivership. However, I believe that ultimately federal regulators had the absolute final say-so on these matters since all of the institutions were federally insured. Federal law granted the federal regulators absolute authority to seize a state chartered association without prior approval of the state regulator. In 1985, at our urging, the FHLB seized state-chartered Guaranty Savings and Loan in Harrison, Arkansas. The institution sued the state, the FHLB and FSILC claiming that FSILC could not take over the institution unless the state regulator first went to state court to appoint a receiver. The Eighth Circuit Court of Appeals upheld our actions, and found that federal law pre-empted state law on these matters in the case of any conflict. The ruling in this case influenced our later decisions

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not to proceed with a receivership without the concurrence of the
 FVBS and FSLIC.

I think all of us who had responsibility for savings and loans
 during the 1980's felt overwhelmed at times and lacking in the
 necessary power, authority or resources to act as effectively or
 decisively as we might have under ordinary circumstances. While I
 never find it hard to defend the decisions we made at the time or
 the actions we took, I often find them hard to explain.

I hope my thoughts have been helpful in clarifying our earlier
 conversation. Please let me know if I can be of further
 assistance.

385:sa
 [signature]

M E M O R A N D U M

TO: Jeff Girth, New York Times
 FROM: Beverly Bassett Schaffer
 RE: Madison Guaranty Savings and Loan
 DATE: February 23, 1992

This is a follow-up to our telephone conversation Wednesday. We talked about three or four issues not clearly addressed in my first memorandum.

First, it is true that in our letter to the Rose Law Firm, we addressed a very narrow legal issue regarding the savings and loan laws and the Arkansas Business Corporation Code. Our letter did not address federal law or applicable federal regulations. The Savings and Loan was required to seek approval from the FDIC, not our office, as to the form of the security prior to its issuance. We had no reason to think the FDIC would approve preferred stock that could not be included in the association's net worth. There would be no point in pursuing such an offering.

Nevertheless, I am certain that Charles Handley discussed with Rick Massey his concerns about federal regulatory treatment of the preferred stock. It is my understanding from Charles that Mr. Massey subsequently provided Charles with a FDIC bulletin or regulation regarding the issuance of preferred stock and assured

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Charles that the preferred stock would be structured in accordance with existing federal regulations so that it would in fact be deemed permanent capital stock for net worth purposes. (I believe there are copies of those regulations or bulletins in the file.)

Second, I am certain that our Department had no definitive proof of insolvency of Madison Guaranty until calendar year 1987. The FHLB documents to which you referred Wednesday in no way constituted a full and final examination report admissible in state court as evidentiary proof of insolvency. During this time, Madison Guaranty had been told to obtain new appraisals of its real estate properties in order to determine the value of the real estate investments of the savings and loan. Those appraisals were not formally ordered until McCougal was fired in July, 1986. Indeed, the difficulty in obtaining definitive real estate appraisals delayed the completion of the audit for 1986 performed by the new auditors hired after McCougal was gone. We did not receive it until the summer of 1987.

State law required that proof of insolvency be submitted in connection with a petition for a receivership or similar character. The audit for the association reflected no such insolvency and the examination reports of the FHLB were inconclusive.

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Further, the 1985 preliminary examination report which was the subject of our meeting in Dallas in July, 1986, did not contain a definitive finding of insolvency either. The comments in that report all refer to the net worth deficiency of the savings and loan, rather than insolvency.

Even if we had had proof of insolvency in 1985, I cannot say our actions would have been different. State law requires that when the savings and loan supervisor determines that a savings and loan is insolvent, the state must notify the savings and loan of such insolvency. The savings and loan then must present a plan to the supervisor as to how the solvency will be restored within a reasonable time. A plan to issue \$1,000,000 of preferred stock within 90 to 100 days might well have been sufficient to satisfy delaying any receivership until at least the expiration of the offering period.

Third, we intended that our approval of the brokerage subsidiary be conditioned on the association ~~first~~ raising the capital before it began operations. You maintain our letter could be read to say that the savings and loan subsidiary could begin operating as long as the capital was in place by December 31, 1985. Perhaps the wording of the letter is ambiguous, but we firmly

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believed that our agreement was as I have stated.

In the file, there is a handwritten memo to me from Charles in December, 1985, concerning a telephone conversation he had had that day with John Lathan. In that conversation, he asked Mr. Lathan if the savings and loan had completed its application with our securities broker-dealer registration division. He said "no" and that there were additional items he had to file before the application could be passed on. Charles then reminded Mr. Lathan of our agreement that the broker-dealer could not begin operating until the capital was in place. From Charles' notes, it appears that Mr. Lathan said that that was not his understanding of our agreement but that the savings and loan would abide by those terms anyway. I do not believe the savings and loan ever completed the broker-dealer application.

Finally, it may be important for you to know that state law grants the savings and loan supervisor no emergency acquisition authority similar to that of the FDICB and FDIC. The appointment of a receiver or conservator under state law requires advance notice to the savings and loan and the filing of a petition in state chancery court, which is a public proceeding. Both we and the FDICB agreed that the lack of ability under state law to seize the institution without notice, remove management and immediately

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take control of the institution from hostile, uncooperative management rendered our receivership provisions essentially useless under the circumstances in which we found ourselves in 1985. The FDIC did not want management tipped off as to the timing of a seizure and the mere filing of a public petition at that time might well have created panic among depositors and a run on the institution between the time the petition was filed and the actual appointment of a receiver. Certainly, it was critical to maintaining public confidence in the insurance fund that FDIC be prepared to accept the receivership. We all agreed that any receivership should be handled under Federal law and, of course, that meant that the FDICB and FDIC controlled the timing.

31 March 1992, 1997

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STATEMENT OF SAM REVER, ATTORNEY FOR JAMES McDUGGAL

As the attorney for James McDougal, I am appalled and affronted by the allegations and reckless disregard of the facts by the New York Times and its reporter, Jeff Gerth. The statement in the March 8, 1992 New York Times article that McDougal used money from his S&L to subsidize the real estate joint venture is not only false but probably actionable by Mr. McDougal against the New York Times.

The author of the New York Times article, never met with me. He called my office twice and set up two separate times to interview me. Mr. Gerth failed to appear for those interviews on both occasions. I had and still have in my possession documents given to me by Mr. McDougal and documents received through my representation of Mr. McDougal, that would be relevant to the subject matter of the Times article. Those documents support the Clintons' contention that those transactions were proper. I would have been happy to make these documents available to Mr. Gerth, had he chosen to keep his appointments to interview me. I have no idea why he missed those appointments, except for the fact that I told Mr. Gerth over the phone that there was no story in my opinion and based on the documents in my possession.

To the best of my ability, I would like to clarify some points about Mr. McDougal's business dealings. First, there was no link between Whitewater Development Company and Madison Guaranty Savings & Loan. In 1989 Jim McDougal was indicted for land transactions that were completely unrelated to this investment. These

REVIEW & OUTLOOK

Smoke Without Fire?

Except for the hired hands, no one any longer is much defending the Clintons on Whitewater issues. Instead, former defenders are scratching their heads over "a coverup without a crime"—why is the White House acting as if it has something to hide? Defenders have advanced to a state of cognitive dissonance, an awareness that beliefs conflict with evidence. The next step is immensely clarifying: OK, they're hiding something; the problem is figuring out precisely what.

This is not to neglect, of course, that a coverup is itself a crime. In the Watergate scandal, obstruction of justice was number one in the articles of impeachment approved by the House Judiciary Committee. The itemized list included making false and misleading statements to investigators, withholding evidence, coaching witnesses and "disseminating information received from officers of the Department of Justice of the United States to subjects of investigations." The "smoking gun" was a tape recording of President Nixon approving a plan to have the CIA ask the FBI to drop its investigation of the "two-bit burglary" at Democratic Party headquarters in the Watergate complex. Along the way, of course, there were 18½-minute gaps in recordings, packets of evidence being destroyed, assertions of executive privilege swept aside by the Supreme Court and other marks of efforts to hide the truth.

In Whitewater, the basic issue is quite similar. We are at a stage of Presidential cronies leaving high office for jail, battles over "attorney-client" privilege, suppressed White House memos suddenly emerging, billing records being discovered in implausible ways. To cover up "two-bit" transgressions back in Arkansas, we are entitled to suspect, the pre-rogatives of the

Presidency are being abused. As a political and constitutional issue, of course, Whitewater doesn't approach the consuming pitch of Watergate, and probably never will unless President Clinton is somehow re-elected and starts a second term.

• • •

The nature of the Arkansas transgressions is suggested by the newly revealed billing records of Hillary Rodham Clinton's work for Madison Guaranty. James McDougal's S&L. She is currently claiming that the 60 hours of work fit under her previous characterization of "minimal," but the question is not so much how much she did as what she did. She used legal skills and political clout to keep the wayward thrift afloat.

In January 1984, the Federal Home Loan Bank Board questioned Madison's lending practices and instructed the Arkansas Securities Department to take steps to close it down. In March, Rose ("atten: Hillary Clinton") received the first \$2,000 monthly retainer from Madison. In January 1985, Governor Clinton appointed Beverly Bassett as Securities Commissioner. On April 4, Mr. McDougal hosted a fund-raiser for Governor Clinton in the Madison's lobby, contributions to which have drawn the attention of the independent counsel.

A cluster of Rose Law Firm billings to Madison shows up in late April, as Mrs. Clinton and others work on a recapitalization plan to save the foundering thrift. Among the records is an hour by Mrs. Clinton on April 29 for a telephone conference with Commissioner Bassett. The next day, the recapitalization plan is presented to the Arkansas Securities Department, and two weeks later Ms. Bassett informs Mrs. Clinton the plan had been approved. In the event it was never implemented, nor did Ms. Bassett close Madison.

A second cluster of Rose billings occurs in late 1985 and early 1986 under the heading "I.D.C."—the Industrial Development Co., which evolved



into the development. Mr. McDougal named Castle Grande. Mr. McDougal bought the former industrial park in October 1985 from three banks which held the mortgage. He paid \$1.75 million, but regulations limited his investment to \$600,000. So he arranged for Seth Ward, then another Madison insider, to hold \$1.15 million as a non-recourse loan from Madison. Mr. Ward also got a 10% commission on each parcel sold.

The Rose "I.D.C." billings commenced in August and really picked up steam in November and December. Federal bank examiners were due back at Madison in February, and Mr. McDougal knew he had to deal with its poor financial condition and the insider loans. Another non-recourse loan for \$25,000 had gone to Madison insider Davis Fitzhugh; Madison CEO John Latham switched it to a phony recourse note before bank examiners arrived; Mr. Latham later pleaded guilty to tampering with the Fitzhugh loan.

Federal investigators concluded that the Castle Grande land was "purchased and sold in a series of fictitious transactions." Mr. McDougal's complex series of loans and paybacks is now under investigation by the independent counsel. The counsel has the cooperation of Robert Palmer, who pleaded guilty to falsifying 25 appraisals for Madison. According to the Rose billing records, Mrs. Clinton had many conversations with Mr. Ward (as well as Webster Hubbell, his son-in-law) as well as conferences with Mr. Latham and Mr. Fitzhugh.

Mr. McDougal's relations with the Clintons is also instructive. He has claimed he put Mrs. Clinton on retainer after Governor Clinton jogged over one day and made the request, mentioning financial hardship. Mr. Clinton denies this ever happened. It is a matter of record, though, that in 1979 the Clintons formed a 50-50 partnership with Mr. McDougal and his wife Susan on the Whitewater Development Co. The idea was to sell land along the White River, but in the end Mr. McDougal heavily subsidized the operation, carrying some of the Clintons' losses. The appearance, in short, is that Mr. McDougal was providing the Clintons a one-way bet.

Another of the Clintons' close friends was Jim Blair, counsel to

chicken king Don Tyson. (Beverly Bassett is now Beverly Bassett Schaffer, wife of Archie Schaffer, director of media and government affairs for Tyson Foods.) Mr. Blair, of course, was also adviser to Mrs. Clinton on her 1978 commodities trades, in which she parlayed \$1,000 into \$100,000. This took place as Bill Clinton's first gubernatorial campaign headed into its final lap.

Yet another friend was David Watkins, political adviser to the governor when he re-entered the governor's mansion in 1983. That year Mr. Watkins steered Mrs. Clinton into a cellular telephone franchise. Her \$2,000 investment netted \$48,000 five years later. Mr. Watkins, of course, wrote the White House memo fingering the First Lady in the Travel Office firings and mentioning an earlier incident with the Secret Service.

David Hale, an Arkansas political figure appointed to a judgeship by Governor Clinton, was head of Capital Management Services, a federally backed small-business lender. He made a \$300,000 loan to Susan McDougal in 1986 to keep Madison afloat. Some of this money apparently showed up in the Whitewater account. Mr. Hale, who pleaded guilty to defrauding the SBA, said he made the loan under pressure from Mr. McDougal and Governor Clinton. Both have denied the charge, and after his plea Mr. Hale has been cooperating with Independent Counsel Kenneth Starr.

And, of course, these are the instances and allegations we know about. The Clintons' circle of friends was even wider. There was David Edwards, the elusive currency trader at the center of a \$23 million gift from the Saudis to the University of Arkansas and who had a long dinner with the President in Little Rock just before Vincent Foster's death. Also Dan Lusater, who ran a bond-trading house and was convicted of social distribution of cocaine, leaving his business to be run while he was in jail by Patsy Thomason, later one of the White House aides who visited Mr. Foster's office the night of his death.

Meanwhile, the New York Post reported yesterday on correspondence in which the New York State Attorney General is inquiring about more than \$100,000 in payments to Mrs. Clinton by the National Center on Education and the Economy, a charity based at

the time in Rochester and since relocated to Washington. Mrs. Clinton sat on the organization's board, along with former New York Governor Mario Cuomo and Ira Magaziner, later health czar. Board members were not paid, but Mrs. Clinton was hired apparently to direct some programs; Dennis Vacco, the new Republican Attorney General, is asking for contracts with her or the Rose Firm and a description of work performed.

Also yesterday, the Associated Press reported that President Clinton was informed in advance of the Travel Office firings, and met twice the week before with Harry Thomason. These findings were omitted from the White House internal review of the matter; the report's author told the AP the omission was "of no consequence," because Mr. Clinton took no action himself. Mr. Thomason, of course, owned the firm that stood to profit from the changes in handling of Travel Office business.

By this point, we should think, the smoke is getting pretty thick. Some little flames may be individually quenched, but there is a certain pattern to them. The Clintons had a lot of friends in the fast lanes in Arkansas, and the whole crowd trafficked in political influence and money. Nearly all of the people involved in these affairs, in Washington and back in Arkansas, are in various degrees of serious legal trouble or personal and political ruin. But Bill and Hillary are in the White House, the dissonance runs, unsmudged and unsmelled.

THOMAS OLIPHANT

A 'smoking gun' fizzles — again

WASHINGTON

As smoking guns go, Rick Massey is a fizzle. And he's anything but unique; he's merely the latest.

The no-longer-young attorney for Little Rock's Rose Law Firm at least provides us with a fresh example of how congressional partisans are handling Whitewater. What makes it unusual is that Whitewater is not an investigation of a scandal, but an investigation in search of a scandal. And it is led by Sen. Al D'Amato's bumbling Senate defamation operation.

Since the New York Republican began spending serious money last year, the list of fizzles has been astonishing: A mystery phone call after Vincent Foster's suicide turned out never to have been made. A mystery phone number turned out to be a White House trunk line. A new "Foster File" was neither new nor Foster's. A key S&L investigator turned out to be a rabid, right-wing, Clinton-hating partisan. And the Small Business Administration, purportedly under White House influence, turned out to have pursued a key Whitewater figure in record time.

And, lest we forget, just a month ago there was a D'Amato-manipulated media frenzy very much like the one last week. It was created around a set of notes from a White House-Clinton lawyer meeting two years ago that was supposed to show efforts to obtain inside information to obstruct official investigations. Out came the notes, which of course showed no such thing.

Each time, the syndrome has been identical: report of explosive evidence, characterization of evidence, interpretation of evidence, surfacing of evidence, evaporation of issue. That's why an examination of Rick Massey's appearance before the D'Amato committee last week should begin with the way it was advertised ahead of time.

Reporters were told he would "contradict" Hillary Rodham Clinton's statements about how their law firm came to represent the infamous Madison Guaranty Savings & Loan. Republicans also said in advance that Massey would contradict her statements that he did most of the work and would say he had little to do with the case.

Not exactly. Massey is now a partner in the firm, and his narrative of events from the spring of 1985 did nothing of the sort.

What Massey did say was that he himself pitched a senior Madison Guaranty executive to have Rose handle the matter, which was an effort to secure a state regulatory opinion that Madison could legally issue preferred stock to increase its capital and arrange a broker's license to handle such a sale of stock.

What is more, Massey said that the executive, John Latham (an acquaintance from college), had originally sought him out at a securities law course he was helping teach in Little Rock. Massey added that Latham told him he lacked the authority to hire him.

Massey said he then "may" have had a "casual conversation" with Mrs. Clinton about this but does not remember a specific conversation.

Mrs. Clinton does remember, however, and she has always said that she then raised the matter of the firm's retention with the S&L's owner, her then-friend, James McDougal. According to testimony by Latham to federal regulators, McDougal suggested retaining the law firm because Mrs. Clinton was a friend, whereupon Latham requested that Massey do the work they had already discussed. All of this — Rose's retention and Massey's assignments — occurred on the same day.

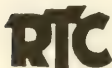
Massey's memory on what happened next is crystal clear. He says the substantive work on the two issues was his alone — researching the issue, framing it for the state regulator and sending a formal letter to the Bill Clinton-appointed official to which he put Mrs. Clinton's name as the firm's billing partner. Massey said his view was that the question of the S&L's ability to issue stock was such a "siam eunk" that he did not believe state regulators even had discretion in the matter.

He was right. The favorable opinion was issued, but the state regulator later attached a condition to an actual stock sale that Madison Guaranty was unable to meet. Mrs. Clinton has said she had no role in that phase of the matter, and no evidence contradicts her.

The lesson of Whitewater is that you take these shrill claims one at a time, listen to testimony and read documents and then discard the claims.

There will be more. Around here, the conventional wisdom is that the number and volume of charges are, more politically important than subsequent facts. A minority view is that there is a critical mass of garbage beyond which partisan defamation is transformed from a sword into a boomerang.

Thomas Oliphant is a Globe columnist.



Resolution Trust Corporation
Office of Inspector General, Office of Investigation

JOHN LATHAM, LATHAM & ASSOCIATES, was interviewed on July 12, 1995 at Little Rock, Arkansas by Special Agent E.P. HUSOK, RTC Office of Inspector General, and Special Agent SCOTT MALLON, FDIC Office of Inspector General. Also present during the interview was LATHAM'S attorney, JAMES RHODES, of the law firm DOVER & DIXON. LATHAM was advised that he was to be interviewed relative to his knowledge of the ROSE Law Firm representation of the former MADISON GUARANTY SAVINGS and LOAN and the 1985 purchase of property owned by the INDUSTRIAL DEVELOPMENT COMPANY (IDC).

LATHAM said that he began working at MADISON GUARANTY as the Executive Vice President in 1983. He said that he was also a member of the Board of Directors of MADISON FINANCIAL CORPORATION, a subsidiary of MADISON GUARANTY.

LATHAM said that at one time, date not recalled, JAMES MCDOUGAL suggested that MADISON GUARANTY use ROSE for some of the legal work at the institution. LATHAM said that, "MCDOUGAL had friends over there, he suggested we use them." LATHAM said when asked who the friends were that it was HILLARY RODHAM CLINTON and others. MASSEY said that he also was familiar with a ROSE attorney, RICHARD MASSEY, with whom he had attended college at the University of Central Arkansas. LATHAM said that he did not specifically recall the manner by which ROSE was paid but knew that at some point the firm was on retainer which he heard was \$2,000 per month. LATHAM said that he did not know who the billing attorney at ROSE was.

LATHAM said that he recalled ROSE working on only one matter for MADISON GUARANTY. He said that the issue ROSE worked on concerned a broker/dealer operation that was purchased by MADISON. He said that he recalled that ROSE worked either on the acquisition of the broker/dealer operation, or on legal aspects of the acquisition after it had been done. LATHAM said that MASSEY worked on the matter because he had specifically asked for him to do so. LATHAM could not recall any specifics of what the services performed by ROSE in the matter were, except that he did recall one occasion when he and MASSEY met with BEVERLY BASSETT of the Arkansas Securities Department (ASD). He could not recall details of that meeting.

LATHAM was asked whether he recalled anyone from ROSE working on a preferred stock offering contemplated or proposed by MADISON GUARANTY. He said he did not. LATHAM said that he recalled that at some time in 1985, the institution was considering every possible means of increasing capital, and that a preferred stock offering was considered along with other means. He recalled that the decision was eventually made to raise capital by a subordinated debt offering. LATHAM said that he did not recall anyone from ROSE working on that issue, rather he recalled that JOHN SELIG of the law firm of MITCHELL, WILLIAMS, SELIG, JACKSON worked on the

By: E.P. HUSOK	Date prepared: July 16, 1995	File No: WA-94-0016
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INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, JANUARY 18, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:12 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Ms. Huber, how are you?

Ms. HUBER. Fine, thank you.

The CHAIRMAN. Would you just stand for the purposes of taking the oath.

Ms. HUBER. Yes.

[Whereupon, Carolyn Huber, Special Assistant to the President, was called as a witness and, having first been duly sworn, was examined and testified as follows:]

SWORN TESTIMONY OF CAROLYN HUBER SPECIAL ASSISTANT TO THE PRESIDENT

The CHAIRMAN. The Committee wants to thank you because I understand you have been through quite a bit to get here, and yesterday and the day before you gave depositions, I guess, late into the afternoon, so we thank you for your appearance.

We know that your counsel has a pressing engagement so we are going to attempt to move this as quickly as we can——

Ms. HUBER. Thank you.

The CHAIRMAN. —to accommodate both you and your counsel.

If you have any statement that you or your counsel would like to make, we are prepared to take it. If not, we will begin the examination.

Ms. HUBER. No, I don't.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Huber, what is your current position at the White House?

Ms. HUBER. I'm a Special Assistant to the President in charge of personal correspondence.

Mr. CHERTOFF. Am I correct that you have known Mrs. Clinton and President Clinton for a long time?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. In fact, you were one of the nonlawyer managing personnel at the Rose Law Firm?

Ms. HUBER. Yes.

Mr. CHERTOFF. Back in the 1980's?

Ms. HUBER. Yes.

Mr. CHERTOFF. And in the 1990's?

Ms. HUBER. Yes.

Mr. CHERTOFF. I would like to direct your attention to August 1995, and I want to help you to fix in your mind what was going on at that period of time, both here and in your own experience at the White House.

You recall in August 1995, there were hearings going on involving the removal of documents from Vince Foster's office?

Ms. HUBER. Yes.

Mr. CHERTOFF. In fact, you testified before the Committee on about August 3, 1995; is that correct?

Ms. HUBER. Yes.

Mr. CHERTOFF. And that again had to do with the events of July 1993, when Mr. Foster died; right?

Ms. HUBER. Yes.

Mr. CHERTOFF. Now, I want you to keep your attention focused on that period in August 1995, while this Committee was in the process of investigating the handling of documents in Vince Foster's office, and I want to ask you whether in August 1995, you had occasion to go to a room on the third floor of the White House residence called the Book Room.

Ms. HUBER. Yes.

Mr. CHERTOFF. What is the Book Room?

Ms. HUBER. It's a—it has bookshelves in it where we keep the Clintons' personal books. It has a closet in there where we keep knickknacks and had a table where it's piled—when we get gifts in from different people, we pile up the books on the table and then the knickknacks and we eventually sort them out. I pack up some of them to send to archives. Part of them we put in the closet.

Mr. CHERTOFF. The Book Room is located in part of the personal quarters of the First Family?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. Am I correct that one of the doors from the Book Room leads into the exercise room?

Ms. HUBER. Yes.

Mr. CHERTOFF. And that is the exercise room that's available to the President and the First Lady and their personal guests at the residence?

Ms. HUBER. Yes.

Mr. CHERTOFF. Can you just tell us briefly where this Book Room is located relative to Mrs. Clinton's private office in the residence of the White House?

Ms. HUBER. On the third floor. It's right next—right next to each other. You go out a door here and then right into here, and they're just like that [indicating].

Mr. CHERTOFF. So it's a few paces away from her private office?

Ms. HUBER. Yes.

Mr. CHERTOFF. This Book Room is not open to the general public obviously; right?

Ms. HUBER. Oh, no, because this is their residence.

Mr. CHERTOFF. In fact, is it the case that the people that use the Book Room are the President and Mrs. Clinton, yourself, and Ms. Marshall?

Ms. HUBER. Yes, and then, of course, the butlers, the maids, and all of the employees there go in there.

Mr. CHERTOFF. Putting aside butlers, and maids, and people who are maintenance personnel, what is Ms. Marshall's position at the White House?

Ms. HUBER. She's the Personal Assistant to the First Lady.

Mr. CHERTOFF. What do her duties involve?

Ms. HUBER. I don't know specifically all her duties. I know that she keeps up with all of her personal—like makeup, you know, dress, getting clothes and just all—you know, like a personal—personal matters.

Mr. CHERTOFF. Is there a table in the middle of this room?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. About how big is the table?

Ms. HUBER. It was about 8 by 4 feet, I would say.

Mr. CHERTOFF. Did you have occasion in a deposition yesterday to do a sketch of this Book Room?

Ms. HUBER. Yes.

Mr. CHERTOFF. To help you and help everybody else, we would like to furnish you with a copy of it and put it up on the Elmo. It is Deposition Exhibit Number 1. You drew this for the Committee last night during your deposition?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. This table in the center is the table you've just described?

Ms. HUBER. Yes.

Mr. CHERTOFF. There's a door that leads to the exercise room?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. Then there are other doors that lead out into hallways?

Ms. HUBER. Yes.

Mr. CHERTOFF. I want to keep your attention to this period of the first week of August, which is, as I say, one of the weeks we were having hearings on the Vince Foster documents. Did you have occasion to go into that room and see some documents lying on that table in the middle of the Book Room?

Ms. HUBER. When—would you rephrase it? I'm not sure.

Mr. CHERTOFF. During the first or second week of August, did you go into the Book Room and see on this table a series of folded-over documents which you now know to be billing records of the Rose Law Firm?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. Would you tell us how you came to go in and what you saw?

Ms. HUBER. I go up into that room periodically to pick up, like I said, the knickknacks to take down to my office, and that day I went up to get a bunch of magazines and newspaper clippings that

we have kept over the years to take them over to my office in the East Wing so that I could get them catalogued. I have a volunteer that does all of this for me.

I had several boxes, and there was a particular box on top of the table that I had—had some of the knickknacks in, and over on the edge of the corner was these documents. And I saw them. I just—they were folded. I didn't open them. I just picked them up and plunked them down into the box. And I called the Usher's Office, if they could come help me tote all these boxes back to my office. So they came up with their little dollies. We carried them to my office. I put them on the floor and left them there.

Mr. CHERTOFF. Now, I want to still keep your attention focused on this period in August. Before this occasion on the first or second week of August when you saw the documents on the table, had you been in that room on an earlier occasion a couple of weeks earlier?

Ms. HUBER. Yes.

Mr. CHERTOFF. On that earlier occasion a week or two before you saw the documents, had you observed what was on the table?

Ms. HUBER. Yes.

Mr. CHERTOFF. Were the documents on the table a week or two before?

Ms. HUBER. No.

Mr. CHERTOFF. I take it from your answers in the deposition that you are quite confident you would have noticed the documents a week or two earlier if they had been on that table?

Ms. HUBER. Yes, I would have.

Mr. CHERTOFF. So that on this occasion you came in and you walked to the table. And you had a box there already?

Ms. HUBER. Yes, there was a box there already, had some of the knickknacks thrown into it.

Mr. CHERTOFF. Had you on earlier occasions brought that box in, in order to collect knickknacks?

Ms. HUBER. Yes.

Mr. CHERTOFF. So that before this event in August, you had been in the room from time to time and you had been in the process of collecting knickknacks and memorabilia; right?

Ms. HUBER. Yes.

Mr. CHERTOFF. On those earlier occasion you did not see these billing records?

Ms. HUBER. No, I did not.

Mr. CHERTOFF. Then in the first or second week of August when you went up, you noticed the billing records on the table?

Ms. HUBER. Yes.

Mr. CHERTOFF. I am going to show you what has been marked as DKS N 28928 all the way down to 29043 and ask you whether this is a copy of the documents or the billing records that you saw in August.

Ms. HUBER. I can't see them.

Mr. CHERTOFF. Let me send them down to you.

Ms. HUBER. My eyesight is not as good anymore. Yes, this appears to be what I saw.

Mr. CHERTOFF. I would like you to show us how they were arranged on that day in August when you walked into the Book Room and saw them on the table [indicating].

Ms. HUBER. These don't seem to fold as good as those. Those folded really well and they cannot open up like this, but it's like that.

Mr. CHERTOFF. So they were folded over. Were they secured by a rubber band?

Ms. HUBER. No, just like this. Just like that [indicating].

Mr. CHERTOFF. And they were on top of a pile of books?

Ms. HUBER. Yes, about like that [indicating].

Mr. CHERTOFF. How close were they to the edge of the table?

Ms. HUBER. About like that [indicating].

Mr. CHERTOFF. Were they clearly visible?

Ms. HUBER. Yes.

Mr. CHERTOFF. When you saw the documents on that day in August, what did you do with them?

Ms. HUBER. I just picked them up and plunked them down in that box that was already there with the knickknacks on it.

Mr. CHERTOFF. Why did you do that?

Ms. HUBER. Because I thought it was something I was supposed to file.

Mr. CHERTOFF. You thought it had been left there for you?

Ms. HUBER. Yes, I thought it had been left there for me to take down and file it in the filing that I do.

Mr. CHERTOFF. Am I correct that one of the reasons you thought it had been left for you is because when you had been there on an earlier occasion, you had not seen those documents?

Ms. HUBER. That's right.

Mr. CHERTOFF. Now let me just, before we move forward in time, I want to get a little bit of a better sense of what this room is. The bookcases contain personal books of the Clintons?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. When we say books, we mean like novels or biography or whatever?

Ms. HUBER. Yes.

Mr. CHERTOFF. Are there also file cabinets in that room?

Ms. HUBER. Yes, I have a file cabinet in there.

Mr. CHERTOFF. Do the Clintons have a file cabinet?

Ms. HUBER. Well, it's theirs.

Mr. CHERTOFF. How many file cabinets are there?

Ms. HUBER. I have two in there.

Mr. CHERTOFF. And can you tell us what's contained in the file cabinets?

Ms. HUBER. One cabinet has all their personal matters that I take care of like, for instance, their condominium, their insurance papers, last year's paid bills and that type thing, I keep in there.

Mr. CHERTOFF. So would you say it is their current financial records?

Ms. HUBER. Yes, the current ones, not the old ones.

Mr. CHERTOFF. What is in the second file cabinet?

Ms. HUBER. It doesn't have anything in it now, except one drawer has a bunch of maps in it.

Mr. CHERTOFF. What was in the second file cabinet in August 1995?

Ms. HUBER. Well, after I got those papers out, just the maps. It's from vacations, like when you keep memorabilia when you go on vacations. It's a whole drawer full of places they have been.

Mr. CHERTOFF. I take it that room is the room in which to your knowledge the President and the First Lady go in when, for example, they want to get a book to read or they want to put a book away?

Ms. HUBER. Not necessarily, because they have bookshelves all over the White House in the residence.

Mr. CHERTOFF. So it's one of the places they would go?

Ms. HUBER. Yes, it's just one of them.

Mr. CHERTOFF. It's also a room that you have to go through in order to get to the exercise room?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. And that table where the documents were found was right in the center of the room?

Ms. HUBER. Yes.

Mr. CHERTOFF. Would you agree with me that it would be—if someone were to enter the room and go through it to go to the exercise room, it would be very obvious—those papers would be very obvious the way they were situated when you found them in early August?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. It would be hard to miss them?

Ms. HUBER. Yes.

Mr. CHERTOFF. Again I want to just try to ascertain who generally has access to this room. You have access to the room?

Ms. HUBER. Yes.

Mr. CHERTOFF. I have to ask you, did you put those documents in the room in the first place?

Ms. HUBER. No, I did not.

Mr. CHERTOFF. Ms. Marshall has regular access to that room?

Ms. HUBER. Yes.

Mr. CHERTOFF. Your understanding of her duties is that they would relate more to kind of personal needs on the part of Mrs. Clinton, things like appointments for, let's say, clothing or things of that sort?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. Then the President and Mrs. Clinton would obviously have reason to be in that room; correct?

Ms. HUBER. Yes.

Mr. CHERTOFF. And you would agree with me that those are the only people, other than, you know, maintenance personnel or people who clean, who would have occasion to be in that room except for house guests?

Ms. HUBER. Yes.

Mr. CHERTOFF. And it is your understanding that house guests might be given permission by the Clintons to be in the exercise room or to be in that room?

Ms. HUBER. Yes.

Mr. CHERTOFF. But I am correct, am I not, that access to that room is very, very limited?

Ms. HUBER. Yes.

Mr. CHERTOFF. It is not like one of the ceremonial rooms in the residence which are sometimes used for functions or in which people might be allowed to come and go with a little bit more freedom?

Ms. HUBER. Yes.

Mr. CHERTOFF. Now, you folded up the documents and you put them into the box and you had the Usher's—

Ms. HUBER. I didn't fold them. They were folded up.

Mr. CHERTOFF. You picked them up and put them in the box?

Ms. HUBER. Just stuck them down in the box.

Mr. CHERTOFF. Did you notice as you did that what kind of documents they were?

Ms. HUBER. I just thought it was—it looked sort of like billing memos, but I didn't open it. From being in a law firm, I thought it kind of looked like them, but I didn't open it so I couldn't tell that it really was.

Mr. CHERTOFF. So from your experience at the law firm, you did have the impression that they looked like the kind of documents that would be billing memos?

Ms. HUBER. Kind of, yes.

Mr. CHERTOFF. But you didn't actually open them and inspect them?

Ms. HUBER. No.

Mr. CHERTOFF. Is part of the reason for that that you assumed that they had been left for you and, therefore, you were simply to file them?

Ms. HUBER. That's true.

Mr. CHERTOFF. You had them sent back down to your office?

Ms. HUBER. Yes.

Mr. CHERTOFF. What happened to them after that?

Ms. HUBER. They were sitting on the floor in my office all these 4 months or how long it's been.

Mr. CHERTOFF. Did anybody make an effort to catalogue what was in the box?

Ms. HUBER. No, it's still there.

Mr. CHERTOFF. I guess it's not accurate to say you discovered them in January because you had put them in the box. How did you come to rediscover them in January?

Ms. HUBER. I had some new furniture built in my office. I have some new built-ins. And I had this big table in there. When I got my new built-ins I didn't need a table anymore because I have shelves and I can put all my things up. I had called to have it moved that morning, on Thursday morning. So they took the table out. Then I decided I would start trying to put my things up on the shelves, and I picked up this billing memo and opened it, and I was surprised.

Mr. CHERTOFF. Is it fair to say you were kind of troubled?

Ms. HUBER. Yes.

Mr. CHERTOFF. What did you do?

Ms. HUBER. I sat down for a few minutes and thought. Then I called Mr. Kendall.

Mr. CHERTOFF. What did you think about in those few minutes?

Ms. HUBER. Well, I just thought what should I do.

Mr. CHERTOFF. Why did you decide to call Mr. Kendall?

Ms. HUBER. Because I have gotten information from Mr. Kendall before on different occasions on records when he needed—when he was—had asked me for records, so I called him.

Mr. CHERTOFF. Did you consider calling Mrs. Clinton first?

Ms. HUBER. No.

Mr. CHERTOFF. Why not?

Ms. HUBER. Because I knew she was busy that day with an interview and I didn't want to disturb her.

Mr. CHERTOFF. Did you consider waiting until Mrs. Clinton was done with the interview?

Ms. HUBER. No, I didn't.

Mr. CHERTOFF. Why not?

Ms. HUBER. Because I thought it was very important that I call someone right away.

Mr. CHERTOFF. And am I correct in my understanding that as soon as you looked at the documents and saw that they were Rose billing records, you immediately understood that these were documents that had been subpoenaed or required by a number of investigating agencies?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. In order to explain that, let me go back a little bit in time and say, were you, yourself, involved over the months in 1994 and 1995 in helping the White House and helping the Clintons personally in responding to various subpoenas and document requests relating to Whitewater?

Ms. HUBER. Yes, I helped Mr. Kendall on several occasions look up documents, and then in July 1994, two of his associates came over to the White House onto the third floor and they copied all of those boxes, my boxes that I have in the closet, or went through every paper and made their little notes, little sticky papers that they left there, things that they were looking at.

Then I had a wooden file cabinet in there at that time. They went through all of those files for 2 weeks, looking through every piece of paper I had up there.

Mr. CHERTOFF. Now, I want to take this step-by-step, because you have mentioned a closet on the third floor and I want to make it clear, the closet you are mentioning is not in this room which is the Book Room?

Ms. HUBER. No.

Mr. CHERTOFF. Is it the same closet that we heard testimony about last year in which for a period of days some of the personal records from Mr. Foster's office were kept?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. And there were other boxes in that closet?

Ms. HUBER. When—what—

Mr. CHERTOFF. Well, after Mr. Kendall's—let me withdraw the question.

After the Foster records had been finally transferred over to Williams & Connolly in 1993, I take it there remained in that closet other boxes of records?

Ms. HUBER. Yes, the boxes that I had brought up here from Arkansas. They're financial records.

Mr. CHERTOFF. And those boxes included Whitewater records relating to Whitewater Development Corporation?

Ms. HUBER. Just some checks that would have been from Whitewater would have been in those files because it was only financial papers, like their income tax returns for the last 10 years or more. That's the type records, checks, personal checks.

Mr. CHERTOFF. So in July 1994, a couple of lawyers from Williams & Connolly came over and they were directed to look at records in this closet in a room on the third floor that is not the Book Room?

Ms. HUBER. Yes.

Mr. CHERTOFF. Who told you or who made the decision as to where these lawyers should look for records? In other words, did the lawyers come to you and say, "Where should we look for records?" Did Mrs. Clinton say, "Tell them to look over here."?

Ms. HUBER. No, Mr. Kendall would call me.

Mr. CHERTOFF. What did he say to you?

Ms. HUBER. He had a request for documents and he would ask me to go up to the boxes and get what he needed and I would copy and send them to him.

Mr. CHERTOFF. Where were the documents that you were copying located in the White House?

Ms. HUBER. On the third floor in that closet.

Mr. CHERTOFF. In that closet?

Ms. HUBER. Yes.

Mr. CHERTOFF. But not in the Book Room?

Ms. HUBER. No.

Mr. CHERTOFF. In all of your going through files at Mr. Kendall's request to copy documents, had you ever seen those billing records?

Ms. HUBER. No, I had not.

Mr. CHERTOFF. So as far as you know from your participation in searching through the Clintons' documents to respond to subpoenas, as far as you know, the places you looked did not contain those billing records?

Ms. HUBER. No, sir.

Mr. CHERTOFF. Did Mrs. Clinton ever have any conversation with you about locations or places in the White House you ought to be looking at in order to comply with subpoenas for documents?

Ms. HUBER. No.

Mr. CHERTOFF. Did you talk with Mrs. Clinton at all about complying with subpoenas for documents?

Ms. HUBER. No.

Mr. CHERTOFF. All of your communication was with Mr. Kendall?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. Was it your understanding that Mr. Kendall was talking with Mrs. Clinton and the President?

Ms. HUBER. Yes.

Mr. CHERTOFF. Was it also your understanding that this searching for documents in July 1994, and on other occasions was in response to subpoenas?

Ms. HUBER. Yes.

Mr. CHERTOFF. Did you understand that they were subpoenas from the Independent Counsel?

Ms. HUBER. Yes.

Mr. CHERTOFF. Did you understand there were subpoenas from the RTC?

Ms. HUBER. Yes.

Mr. CHERTOFF. Did you understand that as of October of last year, there was a subpoena from this Committee?

Ms. HUBER. From what?

Mr. CHERTOFF. From this Committee.

Ms. HUBER. Yes.

Mr. CHERTOFF. Now, I just want to understand a little bit more fully and make sure we have the complete picture of your role in responding to requests for documents. You got your instructions from Mr. Kendall?

Ms. HUBER. Yes.

Mr. CHERTOFF. Mr. Kendall told you what he needed; is that right?

Ms. HUBER. Yes, and we would meet—occasionally he would bring the paper, we would go over what he needed, and I would tell him if I knew a certain name or if I didn't know it. And I told him about what checking accounts they had had.

Mr. CHERTOFF. I take it that you used your best effort to comply with Mr. Kendall's requests for documents based on what you knew about where documents were kept that related to the Clintons' activities?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. During all of that discussion with Mr. Kendall, whether in person or on the telephone, you were not aware or you never ran across these billing records until that day on August 1995, when they were—for the first time, you saw them open—not open, folded on the table in the middle of the Book Room?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. Am I correct, in fact, that you never actually looked in the Book Room for documents at Mr. Kendall's request?

Ms. HUBER. No.

Mr. CHERTOFF. Let me direct your attention to the documents, the billing records, again. When you opened those billing records in January and discovered what they were, in January 1996, did you recognize handwriting on it?

Ms. HUBER. Yes.

Mr. CHERTOFF. It was handwriting in red ink?

Ms. HUBER. Yes.

Mr. CHERTOFF. And just to be very clear, the records you found were not actually original printouts; they were Xerox copies of a printout?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. But the handwriting was in red as original red handwriting?

Ms. HUBER. Yes.

Mr. CHERTOFF. Did you recognize the handwriting?

Ms. HUBER. Yes.

Mr. CHERTOFF. Whose handwriting was it?

Ms. HUBER. It was Mr. Foster's.

Mr. CHERTOFF. You knew Vince Foster's handwriting from your knowing him at the law firm?

Ms. HUBER. Yes.

Mr. CHERTOFF. Did you have an opportunity to read any of the notations that Mr. Foster made on the billing records?

Ms. HUBER. Not until later on that night when I was copying them, I read them.

Mr. CHERTOFF. And you were copying the records at the direction of Mr. Kendall?

Ms. HUBER. Yes.

Mr. CHERTOFF. When you did get an opportunity to read those notations, did you read notations that indicated to you that Mr. Foster had written messages or notations to Mrs. Clinton's attention about certain items on the bills?

Ms. HUBER. I'm not sure who they were directed to. I'm not sure, because I didn't know who he was—who he gave them to.

Mr. CHERTOFF. Did you see, for example, notations where it says, "HRC"—well, let me direct your attention to page 28934, and I'll just do one or two of these.

Mr. SCHUELKE. These do not appear to be arranged sequentially.

Mr. CHERTOFF. I'll send a copy of this down to you.

It says, "HRC—this suggests first matter." It's 28934. I just want to have you verify for us, this is Mr. Foster's handwriting. It says, "This suggests first matter."

Ms. HUBER. Yes.

Mr. CHERTOFF. Now, I want, just to close up in January and then make sure we understand this, after you called Mr. Kendall, he came over?

Ms. HUBER. Not right away. It was about an hour later.

Mr. CHERTOFF. Ms. Sherburne came over too at some point?

Ms. HUBER. Yes.

Mr. CHERTOFF. You gave them the documents?

Ms. HUBER. Yes.

Mr. CHERTOFF. They directed you to copy them?

Ms. HUBER. Yes.

Mr. CHERTOFF. Did you speak to Mrs. Clinton about these documents after you rediscovered them on January 4th?

Ms. HUBER. No, I have not spoken to her since December 22nd.

Mr. CHERTOFF. Now, I want to go back to make sure we have a complete picture, because this is very important, of the situation in this Book Room in August 1995. This room was a room that was a part of the private residence to which the Clintons, yourself, and Ms. Marshall were the people who had access, apart from cleaning people; right?

Ms. HUBER. Yes, yes.

Mr. CHERTOFF. When you went in there sometime in late July to continue with the process of collecting memorabilia, these documents were not on the table?

Ms. HUBER. No.

Mr. CHERTOFF. But when you came back in early August, the first or second week of August, the documents were on the table?

Ms. HUBER. Yes.

Mr. CHERTOFF. They were folded up?

Ms. HUBER. Yes.

Mr. CHERTOFF. They were piled up on books?

Ms. HUBER. Yes.

Mr. CHERTOFF. They were out in the open?

Ms. HUBER. Yes.

Mr. CHERTOFF. Anybody passing through the room could not have missed them?

Ms. HUBER. True.

Mr. CHERTOFF. And you, yourself, made the assumption that someone had taken those documents from wherever they had been kept earlier and had deliberately put them on that pile of books?

Ms. HUBER. Someone had.

Mr. CHERTOFF. They didn't get there by themselves?

Ms. HUBER. No.

Mr. CHERTOFF. And you, yourself, could tell even from a casual glance, although you didn't look at the actual records, you could tell based on your familiarity with the Rose Law Firm that they were billing records?

Ms. HUBER. Yes.

Mr. CHERTOFF. Even though they were folded up?

Ms. HUBER. Yes.

Mr. CHERTOFF. It stands to reason that anybody else who was in that room, at that point in time, and saw those records who was familiar with the Rose Law Firm billing records would also have recognized them to be billing records?

Ms. HUBER. I don't know.

Mr. CHERTOFF. It also stands to reason that the person who put those records on that pile of books was someone who had the ability to gain access to that room and also had access to those records; is that right?

Ms. HUBER. Yes.

Mr. CHERTOFF. In fact, the reason you put those records in the box to take down was because you believed that either the President or Mrs. Clinton had left them there for you for that purpose?

Ms. HUBER. No, I didn't—I didn't assume that.

Mr. CHERTOFF. Well, who did you think had left them there?

Ms. HUBER. I didn't know. I didn't know who left them there.

Mr. CHERTOFF. But your assumption was someone had left them there?

Ms. HUBER. That someone had, but I did not know who.

Mr. CHERTOFF. And this occurred—let me ask you maybe to help fix the date. Did this event occur after you came to testify before the Committee, which was on August 3 or before?

Ms. HUBER. I do not remember exactly what day it was. I cannot remember. I don't make notes of when I go up and down the stairs or what.

Mr. CHERTOFF. But you do remember this occurring in early August, which we have ascertained is the same time that we were having hearings in this very room about the issue of documents from Mr. Foster's office?

Ms. HUBER. Yes.

Mr. CHERTOFF. You do remember August 1995, as a time when there had already been a number of requests from various investigating agencies for documents relating to the Whitewater investigation and related matters?

Ms. HUBER. Yes.

Mr. CHERTOFF. In January, when you actually opened the records, you immediately recognized that these were documents that were called for by the subpoenas and requests for documents you had been working on over the preceding year or so; right?

Ms. HUBER. Yes.

Mr. CHERTOFF. It wasn't hard to see that?

Ms. HUBER. No.

Mr. CHERTOFF. Let me ask you this. In terms of your decision when you were thinking about calling Mr. Kendall in January of this year when you rediscovered the documents, you said you thought about it for awhile, you tried to decide what to do. Had you at that point heard that a memo relating to the Travel Office firings had been recently discovered in the White House?

Ms. HUBER. I don't know whether I had or not, because—I don't really read the newspaper.

Mr. CHERTOFF. Had you heard any discussion in the White House that there had been a delay in turning over that memo in January because there was some debate in the White House about whether the memo ought to be turned over?

Ms. HUBER. No.

Mr. CHERTOFF. So that didn't enter into your thinking?

Ms. HUBER. No, it didn't.

Mr. CHERTOFF. Now, I want to bring your attention back to 1992 for a moment before my time runs out, and I want to ask you another question about a different set of records.

We heard some testimony 2 days ago concerning Whitewater records that were held at the Rose Law Firm in 1992 in February. We heard Mr. Kennedy indicate that he had gotten a message from the First Lady in February 1992, to get some Whitewater records out of the Rose Law Firm over to the campaign. We heard that Sue Cathey-Jones had gotten a message from Mrs. Clinton to do that, and we also heard that neither of them when they actually went to pick up the records could find the records at the firm. They had already been moved. Did you get a similar call?

Ms. HUBER. Yes, I did.

Mr. CHERTOFF. Tell us about that.

Ms. HUBER. I got a call about 11:30 from Mrs. Clinton to ask me to take their personal records down to the campaign office.

Mr. CHERTOFF. Did you understand the personal records to include the Whitewater records?

Ms. HUBER. No, they did not.

Mr. CHERTOFF. What did you understand them to include?

Ms. HUBER. The boxes that I have moved up here, the financial—personal financial records is what I was to get.

Mr. CHERTOFF. What time was the call?

Ms. HUBER. It was about 11:30 at night.

Mr. CHERTOFF. On what day?

Ms. HUBER. On a Saturday night.

Mr. CHERTOFF. Did Mrs. Clinton tell you why there was an urgency about getting this done?

Ms. HUBER. No, she just said the campaign needed them.

Mr. CHERTOFF. When did you go over to get the documents?

Ms. HUBER. They were at the Rose Law Firm. I had had them in my office there. I went down to get them, and they had already been moved to the campaign headquarters.

Mr. CHERTOFF. So Mrs. Clinton called you at 11:30 that night and asked you to go down that very night on Saturday?

Ms. HUBER. Yes, yes. She had been trying to reach me earlier. I had been at the Repertoire Theater. They couldn't get in touch with me.

Mr. CHERTOFF. So she had been trying to reach you all night?

Ms. HUBER. Yes, all night. I didn't get home until about then.

Mr. CHERTOFF. When you got the call at 11:30 Saturday night, she asked you to go down immediately and get the records?

Ms. HUBER. Yes.

Mr. CHERTOFF. When you arrived there, they had already been moved?

Ms. HUBER. Yes.

Mr. CHERTOFF. And did you ever find out who had moved the records?

Ms. HUBER. No.

Mr. CHERTOFF. I think I'm out of time, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you, Mr. Chairman.

Ms. Huber, I want to be clear on one thing so there is no confusion, although I think Mr. Chertoff cleared it up, but twice in questioning you he said—once he said you folded up the documents and another time he said they were open on the table, but as I understood your testimony, these documents were folded over to begin with, you did not fold them over, and they were not open on the table; is that correct?

Ms. HUBER. That's correct. They were folded.

Senator SARBANES. You also said you noticed the billing records on the table, but these were folded documents. Did you know—I mean, did you really identify them as billing records at the time?

Ms. HUBER. No, because—I didn't identify them. I just picked them up and plopped them down in there. And I thought it looked like maybe computer printouts of billing memos. I didn't open it up to verify it. It was just from working in the law firm, I thought that's what it looked like.

Senator SARBANES. So you then put them in a box and then had that box delivered from the Book Room down to your office in the East Wing of the White House; is that right?

Ms. HUBER. Yes, sir.

Senator SARBANES. Then that box was placed under a table in that room; is that correct?

Ms. HUBER. It was placed on the floor.

Senator SARBANES. And left there?

Ms. HUBER. Yes.

Senator SARBANES. Then when they redid your office, took the table out, you then wanted to clear out the boxes. Is that when you found these papers?

Ms. HUBER. Yes.

Senator SARBANES. That was on January 4th?

Ms. HUBER. Yes, sir.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Ms. Huber. Here I am.

Ms. HUBER. Sorry.

Mr. BEN-VENISTE. Ms. Huber, about what time of the day on the 4th of January did you find the records?

Ms. HUBER. It was about 11 a.m., because that's—after they had moved the table out, that's about the time they had gotten through moving it out and getting my office straightened up again.

Mr. BEN-VENISTE. And then the first thing you did was to call Mr. Kendall?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. Then you also called your—

Ms. HUBER. Then I called my attorney, Mr. Schuelke.

Mr. BEN-VENISTE. Mr. Schuelke. Then Mr. Kendall came over?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. He met with you and he looked at the records?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. That evening you copied the records. How many copies did you make?

Ms. HUBER. I made two copies.

Mr. BEN-VENISTE. And you met with Mr. Schuelke as well?

Ms. HUBER. Yes, Mr. Schuelke, Mr. Kendall, and Ms. Sherburne came.

Mr. BEN-VENISTE. Did anyone suggest to you in any way that you not turn over these records?

Ms. HUBER. No.

Mr. BEN-VENISTE. Was there any suggestion from any corridor that there should be any delay in turning over the records?

Ms. HUBER. No.

Mr. BEN-VENISTE. Now putting aside whether these records are, in fact, covered by any subpoena by this Committee, let me ask you whether you had occasion to review the subpoenas of this Committee, or the RTC, or the Independent Counsel personally.

Ms. HUBER. Not the real subpoenas, I didn't.

Mr. BEN-VENISTE. You were just looking for various kinds of records?

Ms. HUBER. Records that were in the memos.

Mr. BEN-VENISTE. In connection with the search for records and the assistance that you provided to Mr. Kendall and others in locating records, we have talked about the records that were in the closet of your office which you made available and which were copied and annotated by Mr. Kendall and his assistants. Did you have any reason to believe that there were any records of a financial or other pertinent nature, other than the Clintons' personal and current records, that were contained in the Book Room?

Ms. HUBER. No.

Mr. BEN-VENISTE. So that was not a place which you either searched or directed anyone to search for the records?

Ms. HUBER. No, no.

Mr. BEN-VENISTE. Going back to August 1993, about what time of day, if you can recall—and I know that would be a harder question to answer than the January question—

Ms. HUBER. You mean 1995?

Mr. BEN-VENISTE. In 1995, I'm sorry. Back in August 1995, when you first noticed the folded-up records on the work table in the Book Room, do you recall what time of day that was?

Ms. HUBER. It was in the morning.

Mr. BEN-VENISTE. Now to the best of your knowledge, how long a period had elapsed prior to that time before you had been in the Book Room on the previous occasion?

Ms. HUBER. It could have been 2 to 3, 4 days, because I was in—I don't remember—I don't go in everyday but I will go in through there, you know, frequently.

Mr. BEN-VENISTE. So you don't have any idea or wouldn't have the ability to form any opinion as to how long those billing records may have been lying on that table, other than that you probably would have noticed it on the prior occasion had they been there, and you think that was at least 3 or 4 days?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. So there was a 3- or 4-day period. Let me ask you a very important question that I don't think has been asked of you this morning, and that is whether you know who left those records there?

Ms. HUBER. I do not know.

Mr. BEN-VENISTE. Did anyone tell you who left those records there?

Ms. HUBER. No.

Mr. BEN-VENISTE. You saw the records, you put them in a box. How long a period of time elapsed before that box was moved to your office in the East Wing?

Ms. HUBER. Oh, it was immediately after I got them packed up, so I was up there probably 10 or 15 minutes packing the books up and then we went right on to my office.

Mr. BEN-VENISTE. That was how many boxes altogether?

Ms. HUBER. Probably that day, I probably had four or five boxes of stuff.

Mr. BEN-VENISTE. If I understand your testimony, those boxes then reposed under a work table in your East Wing office until January?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. Can you tell us whether to the best of your knowledge the records appeared to be in the same condition and in the same place where you had put them back in August when you rediscovered them in January when the table was removed from your office and you set about dealing with putting away the materials in the boxes under your work table?

Ms. HUBER. Yes, they were there. Same place.

Mr. BEN-VENISTE. Same place.

Ms. HUBER. Same way they were.

Mr. BEN-VENISTE. They did not appear to have been——

Ms. HUBER. Been disturbed.

Mr. BEN-VENISTE. The handwriting which appears on the records—do we have that set of records or have they been taken back? Could the same records be placed in front of Ms. Huber, please?

Ms. Huber, the handwriting that you had recognized as that of Vince Foster was in red ink; is that correct?

Ms. HUBER. Yes, sir.

Mr. BEN-VENISTE. We have received what I understand to be a color photocopy of the materials that you received.

Ms. HUBER. Yes.

Mr. BEN-VENISTE. So that on our copy, Mr. Foster's handwriting is also in red ink because of the reproduction process in color. Can you tell us whether to the best of your knowledge Mr. Foster's handwriting was original handwriting; that is, ink on paper as opposed to a color photocopy of red ink on paper?

Ms. HUBER. No, it was original ink.

Mr. BEN-VENISTE. There was other handwriting, was there not?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. The other handwriting you have identified as having been from what people, in terms of the handwriting you could actually identify?

Ms. HUBER. There's some from Mrs. Clinton on there and some from the accounting girls that I recognize.

Mr. BEN-VENISTE. That writing was photocopied handwriting; is that correct?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. So the only original handwriting to the best of your knowledge on those documents was that of Mr. Foster and in red ink?

Ms. HUBER. Yes, sir.

Mr. BEN-VENISTE. Now going back to the procedures with which you were familiar by reason of the fact that you were office manager at the Rose Law Firm, would a copy of billing records have reposed in the billing or accounting or bookkeeping office at the Rose Law Firm for some period of time?

Ms. HUBER. You mean the originals? I didn't understand.

Mr. BEN-VENISTE. Either a copy or the original of—

Ms. HUBER. The originals are kept in the accounting department.

Mr. BEN-VENISTE. OK. We have had testimony about it from Mr. Kennedy, and I guess Mr. Clark will also testify and to some extent Mr. Massey will testify about the document destruction policy; that is, keeping the files current and not accumulating a lot of unnecessary paperwork in the firm. Were you familiar with that policy?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. Under the normal scheme of things, would you think that it would be remarkable for billing records from the period 1985 to have survived the various housecleanings at the Rose Law Firm?

Ms. HUBER. No, because after 7 years, they can destroy—they can—

Mr. BEN-VENISTE. You have some water there if you like—

Ms. HUBER. They can destroy—

Mr. BEN-VENISTE. Take a moment.

Ms. HUBER. Excuse me. But after 7 years, they can destroy the documents in the accounting department, so periodically the accounting supervisor would go over and destroy them.

Mr. BEN-VENISTE. It appears, however, quite clear to all of us that these records have survived the normal document destruction procedure, at least in this photocopy. Do you know how those records would have gotten to the White House?

Ms. HUBER. No, sir.

Mr. BEN-VENISTE. Has anyone told you?

Ms. HUBER. No.

Mr. BEN-VENISTE. We have heard testimony from Ms. Thomases that Mr. Hubbell referred to certain time records or billing records in a conversation with her at some point during the campaign. Do you have any reason to believe that Mr. Hubbell had these records in his possession?

Ms. HUBER. I don't know.

Mr. BEN-VENISTE. Now during the period of time that the copies were made, they were made at the White House?

Ms. HUBER. Yes, in EOB Building.

Mr. BEN-VENISTE. In the Executive Office Building?

Ms. HUBER. In the new Executive Office—

Mr. BEN-VENISTE. The new EOB. Why did you go to the new Executive Office Building to make the copies?

Ms. HUBER. We were looking for a colored photocopying machine so that it would pick up the colors, the things that were marked in red.

Mr. BEN-VENISTE. And that was the one that you located?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. The next day those documents were turned over to this Committee, I believe, by Mr. Kendall. Are you aware of that?

Ms. HUBER. Yes.

Senator SARBANES. Ms. Huber, let me ask you this question. This material in the Book Room that you would take and then eventually file away, none of this stuff was urgent to be filed, I take it? You would accumulate stuff over a period of time and then—let me put the question more directly. You had all these materials and they sat in a box for 4 or 5 months before anything was done with them. Was that unusual, or would you frequently or, at least, from time to time accumulate material and would simply wait until you could get around to filing it away?

Ms. HUBER. That's true. It was not critical. None of the stuff that I bring down to do is critical. It's just stuff that when I get time, I work on it.

Mr. BEN-VENISTE. So the—

Senator SARBANES. So the fact that you had this material sitting there in a box for a substantial period of time was not unusual and wasn't out of the ordinary course, at least, as far as you were concerned?

Ms. HUBER. No.

Senator SARBANES. OK.

Mr. BEN-VENISTE. Let me go to the question of back in 1992, during the campaign. You recall that there was an inquiry with respect to an issue that came up during the campaign that involved Whitewater; is that correct?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. Could you tell us how you learned about it and what the immediacy was of getting an answer to questions?

Ms. HUBER. Well, there were people from the campaign office that had called me about check records, that type of thing. That's how I knew about it, was Ms. Lynch and Mr. Martin. That's the only way I knew about it.

The CHAIRMAN. Ms. Lynch, and who else was that?

Ms. HUBER. Mr. Martin.

The CHAIRMAN. Mr. Martin, thank you.

Mr. BEN-VENISTE. That was prompted by an inquiry which they had received from a newspaper reporter as has been developed in the evidence here, Mr. Gerth from The New York Times. Did you understand that they were trying to get an answer to some questions that had been raised by this reporter on a rush basis?

Ms. HUBER. That's what I understood. That's what the rush was all about.

Mr. BEN-VENISTE. In terms of the records which you had been familiar with that had been taken to the campaign office, did you have the opportunity to see them?

Ms. HUBER. The records while they were there?

Mr. BEN-VENISTE. Yes.

Ms. HUBER. Yes, I saw them on a table; and they were looking at them.

Mr. BEN-VENISTE. Did you think that there was anything inappropriate or unusual about the records being made available to answer questions posed by the news reporter during the campaign?

Ms. HUBER. No, I didn't know any—it didn't—I didn't know.

Mr. BEN-VENISTE. Do you have any reason to believe that any of those records were destroyed, or hidden, or in some way made unavailable?

Ms. HUBER. No.

Mr. BEN-VENISTE. I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Huber, you found these documents on a corner of the table in the Book Room; that's correct, isn't it?

Ms. HUBER. Yes, sir.

Senator FAIRCLOTH. Was this room cluttered or was it orderly and clean as I would imagine you keep it?

Ms. HUBER. No, it was cluttered.

Senator FAIRCLOTH. It was cluttered?

Ms. HUBER. Yes.

Senator FAIRCLOTH. Who had access to this room?

Ms. HUBER. Ms. Marshall and I both had the same amount of access to the residence. The Clintons' house guests and employees.

Senator FAIRCLOTH. So just you, Ms. Marshall, the Clintons, and their personal house guests?

Ms. HUBER. Yes.

Senator FAIRCLOTH. Ms. Huber, when was the last time prior to your finding them in August that you were in the room?

Ms. HUBER. I can't really pinpoint it. You know, I would say I was in through there every 2 or 3 days.

Senator FAIRCLOTH. When you discovered them that day in August, you had been in that room reasonably frequent—2 or 3 days as your normal course of duty?

Ms. HUBER. Yes.

Senator FAIRCLOTH. If they had been there before, you would have discovered them before, would you not have?

Ms. HUBER. I don't think I could have missed them.

Senator FAIRCLOTH. These records were not on the table before. You wouldn't have missed them. Isn't it likely that someone pulled them out and was looking at them in the time between your visits, somebody had looked at them?

Ms. HUBER. I don't know.

Senator FAIRCLOTH. But they placed them there?

Ms. HUBER. They appeared there.

Senator FAIRCLOTH. During this time period, do you recall any visitors to the third floor, such as Susan Thomases, who may have gone into that room? Do you remember any strangers or any—personal—not strangers it would not have been, but any visitors to that room other than the Clintons' normal traffic back and forth?

Ms. HUBER. I can't remember that, because I'm not up there all the time.

Senator FAIRCLOTH. But you didn't see anybody in the room?

Ms. HUBER. I didn't see anybody there.

Senator FAIRCLOTH. Just a point—this room is right next door, just a wall separating it from Mrs. Clinton's office?

Ms. HUBER. Yes.

Senator FAIRCLOTH. There is just a wall between, they are right next door to each other. Because Mrs. Clinton and her ghost writer were working on a book, would she have reason to be in the Book Room more often than usual? Was Mrs. Clinton in and out, since she was writing her book?

Ms. HUBER. Well, they hadn't begun on it then.

Senator FAIRCLOTH. They hadn't begun the book then?

Ms. HUBER. No. I think she had been writing it, but it had been in longhand and she hadn't been up to the third floor yet.

Senator FAIRCLOTH. Now as I understand it, President Clinton is an avid reader?

Ms. HUBER. Yes.

Senator FAIRCLOTH. So does he use this room quite often for reading?

Ms. HUBER. I do not know.

Senator FAIRCLOTH. Another question, Ms. Huber. Very late in the evening on the night of Vince Foster's death, the First Lady called you for 4 minutes.

Ms. HUBER. Yes, sir.

Senator FAIRCLOTH. This was approaching midnight or very late. This was after she had spoken to Maggie Williams. Could you tell us what the conversation was or might have been about?

Ms. HUBER. Be glad to. She called me, she said Carolyn, do you know—can you figure out why Vince killed himself? And I said I cannot, I cannot believe it. And that's all we talked about.

Senator FAIRCLOTH. That was the extent of it?

Ms. HUBER. It was—I had been a friend of his for all those years, too. He was a very dear friend.

Senator FAIRCLOTH. But to go back very briefly on this, the only people that have access to this room are yourself, President and Mrs. Clinton, and Ms. Marshall, whose primary responsibility is to work with Mrs. Clinton on a personal matter, on clothing or make-up or whatever?

Ms. HUBER. And, of course, the house guests.

Senator FAIRCLOTH. Of course, yes.

Thank you, Ms. Huber.

Ms. HUBER. You're welcome.

Senator FAIRCLOTH. Mr. Chairman, I think we are all concerned with the testimony we've heard today. I think it's our duty to find out who hid these records during that period of time, and they were hidden. I have said before the First Lady should come here and tell us what she knows. Now with today's testimony, this Committee, we have no choice at the very minimum to depose the President and First Lady on a reasonable assumption of possible obstruction of justice on this very issue.

Now, Ms. Huber will tell us that these records were in the third floor of the White House in August, full view, in a room accessed only by the Clintons and Ms. Huber. Ms. Huber did not put them there. She did not know what they were when she removed them. Certainly, Ms. Marshall, the lady that was helping Mrs. Clinton, didn't put them there. So this leaves two people who could have put them there. These records were under subpoena for 2 years, since January 1994. We need the President and First Lady to tell us that they did or that they did not put them there.

Mr. Chairman, I have to conclude that what we have here is a very likely serious case of obstruction of justice. If not, then we need to find out.

Thank you.

The CHAIRMAN. Senator, let me, if I might respond. I think the Senator in summing up his observations of Ms. Huber's testimony would want to include that house guests obviously also had access to this facility, and certainly for cleaning purposes, some of the help. We will, as it relates to Ms. Marshall, take her deposition. We certainly welcome any clarification that the White House wants to make with regard to this.

I think it is very serious, and given the fact that Ms. Huber has testified that these were handwritings by Mr. Foster, that they were original, and given the questions concerning the removal of files from Mr. Foster's office, it is disturbing that these documents were withheld or at least not discovered.

I have no reason to doubt Ms. Huber's testimony. As a matter of fact, I want to commend her for her forthrightness and the manner in which she has testified. That should be very, very clear. I want that to be part of the record and I think all my colleagues agree. But we will reserve decision on the rest.

The First Lady has indicated that she wants to cooperate. We welcome that. And if she wants to come in to testify, she is certainly welcome to do that. It just seems to me that as time goes along, more facts come forward and in a way that does not, I think, serve the interest of either the White House, or the American people, or this Committee, to be quite candid, but we'll take that under advisement.

Senator FAIRCLOTH. Mr. Chairman, I have one thing. As we have done before, I would like to request that we get access to the Secret Service logs for the time period Ms. Huber has identified so that we can find out who visited the third floor.

The CHAIRMAN. Let me say that's another area that we will examine. I'll have staff, and White House Counsel is here, ask for a review of the house guests during that period of time because obvi-

ously that is important for a number of reasons. I won't add to speculation, but we will look and ask for that information.

I was going to go to Senator Mack, but I see that the yellow button is up. They are going to yield, so would you put—no? OK. No, then fine. That's why I said that rather than start with 1 minute left, I would just as soon then yield to my colleague. So let me yield and accord him his time.

Senator Sarbanes.

Senator SARBANES. Ms. Huber, I want to be clear on one thing. I think you said earlier before Senator Faircloth started questioning you that the maids, and ushers, and the people who worked in the White House had access to this room as well?

Ms. HUBER. Yes.

Senator SARBANES. So that would be—generally, the staff in the White House residence would have access as well?

Ms. HUBER. Yes.

Senator SARBANES. All right.

Mr. BEN-VENISTE. Ms. Huber, I would like to be very clear on one point. The records that are in front of you reflect time spent by attorneys at the Rose Law Firm back in 1985 and 1986 with respect to the representation of Madison Bank; is that correct?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. Those records do not relate to, refer to, or are in any way related to Whitewater, the Whitewater Development Company?

Ms. HUBER. No. This is all Madison.

Mr. BEN-VENISTE. I just wanted to make that clear so that there is no misunderstanding in terms of what has been subpoenaed and what has not been subpoenaed. I think that's another issue.

I think that it's quite clear that you did exactly the right thing in bringing this material to our attention because it's clearly of interest to us. The records have been quite useful in examining Mr. Massey and others in terms of what work was done by the Rose Law Firm and the partners and associates thereof in connection with the Madison representation back 10 and 11 years ago.

We want to thank you for that, and I know you're obviously quite nervous about appearing here today, and I want to say that on behalf of us on the Committee who have dealt with you previously, we think that you have been very candid and have acted in the most appropriate manner.

Ms. HUBER. Thank you.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

Ms. Huber, when did you determine that the files that you had taken out of the box that were now in your office which you have referred to there in front of you were the records that you had picked up in the Book Room? What brought about that connection?

Ms. HUBER. I didn't have to have a connection. It was the box that I brought down from upstairs.

Senator MACK. The only reason I would ask that question is that you brought that box down in August, I guess, and it was there for 4 or 5 months.

Ms. HUBER. Well, you haven't seen my office. I have boxes in there that's been in there for 3 years.

Senator MACK. So there was no question in your mind that when you picked up this document, you immediately remembered picking it up in the Book Room?

Ms. HUBER. Yes, I did.

Senator MACK. At what point was the White House aware that rather than for these documents to have been found just this past January, they were actually in the residence back in August?

Ms. HUBER. Pardon? I didn't—I don't understand that.

Senator MACK. Maybe I don't understand this. We first heard about these records early this month.

Ms. HUBER. Yes.

Senator MACK. When you discovered them in the box in your office, correct?

Ms. HUBER. Yes.

Senator MACK. But as we are hearing this morning, you actually found those documents in August of this past year; is that right?

Ms. HUBER. That's true.

Senator MACK. My question then was when did you tell the White House folks that you actually found these in August and not in January?

Ms. HUBER. You mean when I called Mr. Kendall on January 4?

Senator MACK. Well, I understand that when you spoke with Mr. Kendall, you—

Ms. HUBER. That's when I discovered that they were the documents that had been subpoenaed.

Senator MACK. OK. But when did you tell Mr. Kendall that you actually found these?

Ms. HUBER. The minute I opened them up. I sat down and thought just a few moments, and then I thought the thing that I have to do is to call Mr. Kendall to tell him. I told him, I have found a document, David, that I think you are looking for. Would you please come to my office.

Senator MACK. When he came to your office, what did you tell him?

Ms. HUBER. I showed it to him. I didn't say anything. I just handed it to him.

Senator MACK. So at this point Mr. Kendall was not aware that you had actually picked this document up back in August?

Ms. HUBER. No, he didn't know I had it.

Senator MACK. No, I understand that. Did you ever say to Mr. Kendall, now, I actually picked this document up in the Book Room back in August, could be by mistake but I just picked it up and put it in a box and brought it into my office?

Ms. HUBER. When he came over, I explained to him.

Senator MACK. Did you explain to White House Counsel at the same time?

Ms. HUBER. No, he was by himself when he came to see me.

Senator MACK. What I'm trying to determine is at what point did the White House learn that you actually picked these documents up for the first time in August?

Ms. HUBER. That day, January 4th.

Senator MACK. So you did inform them at that point?

Ms. HUBER. Yes, that day.

Senator MACK. Is it reasonable for me to conclude that Mrs. Clinton is aware of the fact that you had picked those documents up in August out of the Book Room?

Ms. HUBER. No, I've—she didn't know I picked them up. I did not say—I did not tell anybody I had picked them up.

Senator MACK. I am now referring to after you had told White House Counsel.

Ms. HUBER. You mean on January 4th?

Senator MACK. Right.

Ms. HUBER. I did not speak to her.

Senator MACK. You may not know, but is it reasonable for me to conclude that if the White House Counsel was informed by you on January 4th that you had picked these documents up in the Book Room in August, that Mrs. Clinton is aware of that?

Ms. HUBER. I don't know. I don't know if they talked to her.

Senator MACK. The last time you talked to her was when?

Ms. HUBER. December 22nd.

Senator MACK. And again, there's just no question in your mind that you actually picked these up in August?

Ms. HUBER. Around that date, the best—to my knowledge.

Senator MACK. Mr. Chairman, the term or phrase "obstruction of justice" has been used, and as I have said many times before this Committee, I am not an attorney so I don't know really what constitutes obstruction of justice. I do know that these records have been under subpoena for 2 years, and I have, I think, said on more than one occasion over the past several months that I have drawn a conclusion to this point that every step of the way it appeared that the White House has been involved in activities designed to influence the outcome of this investigation. I have not used the term "obstruction of justice" because, again, I am not an attorney and I don't want to use a term that I am not familiar with.

But we have been seeking these records for 2 years, and I guess I also raise this question in light of the treatment that I think that we have received by some who have come to testify before us. It's almost as if there was a game being played with the Congress. Some witnesses, I think, have had an attitude almost of contempt for what we are trying to do. So I ask you this question, and maybe I should direct it to Counsel. What, in fact, is obstruction of justice with respect to the handling of these kinds of files?

The CHAIRMAN. Well, I refer that question to Counsel.

Mr. CHERTOFF. Senator, there are I guess two senses in which people refer colloquially to obstruction of justice. There are a series of obstruction of justice statutes that relate to the obstruction of a Congressional inquiry, obstruction of a subpoena, for example, from a Grand Jury, obstruction of a subpoena from an administrative agency like the RTC. If one is aware of a subpoena and knowingly takes steps to frustrate compliance with the subpoena by, for example, concealing documents or destroying documents, that can be an obstruction of justice, depending on who issues the subpoena.

The second concept is the concept of contempt. There is, in fact, a notion that if one refuses or fails to comply with a Grand Jury subpoena or with a Congressional subpoena, it can be a contempt

of Congress or contempt of court, again depending on who it is that issues the subpoena.

So what it turns on is knowledge of the existence of the subpoena, and we have had some testimony here obviously that certainly Mr. Kendall was aware and was taking steps to make the White House aware that there were outstanding subpoenas. That's one element of what makes obstruction or contempt. The second is whether in fact documents have been withheld or destroyed, and the third is if they were withheld and destroyed, who did it and did they do it with knowledge of the subpoenas. And of course, the subpoenas here have been pretty well publicized.

I should observe in connection with that, Senator, that our own subpoena from this Committee dated October 30, which was voted I believe unanimously by the Committee, there are separate subpoenas directed to the White House, to Williams & Connolly, and to the President and Mrs. Clinton themselves. Each of them require, among other things, all documents that refer or relate to the operations, solvency, and regulation of Madison Guaranty Savings & Loan or any entity controlled by that. And there's no doubt in my mind that our subpoena absolutely calls for the production of these records.

I also understand from having read the Pillsbury Report that their investigation specifically included the activities of the Rose Law Firm, as did the Inspector General of the RTC. I am aware of the fact that they issued subpoenas, although I don't think we have seen those subpoenas and they will have to address that.

Mr. BEN-VENISTE. Senator Mack's question was directed to Counsel. As that the term may include the plural, I might have a little different take than my colleague, Mr. Chertoff.

Senator MACK. I certainly have no objection to your responding to my question, but I would hope that I would have a few additional minutes.

The CHAIRMAN. Let me first say certainly, Mr. Ben-Veniste, we would appreciate your insight, and Senator Mack will get the additional time.

Mr. BEN-VENISTE. I think when you use an expression like obstruction of justice, you have to be very careful, and that's not a term to throw around. That doesn't minimize in my view the importance of our Committee looking into the issue of how these documents came to be discovered, who had them in their possession, and whether there were any shenanigans in connection with their discovery and ultimate production to this Committee. Indeed as has been said, the documents themselves are to a large extent confirmatory and corroborative of the basic questions of who did what work and how much work was involved for the Madison Bank.

When we talk about obstructing this Committee's inquiry, I think we have to look carefully at the subpoena itself, and again, I am addressing your question regarding obstruction. And on the basis of the subpoena that issued from this Committee that called for documents relating to the operations, solvency, and regulation of Madison and any subsidiary, affiliate, or other entity owned or controlled by Madison, as Mr. Chertoff pointed out, the billing records of the Rose Law Firm would not seem to fit into that category as the operations, solvency, and regulation of the Madison Bank.

And again, let my comments not be misinterpreted. I don't know what anybody else's subpoena said. I know what our subpoenas said. I know also that the issue of the billing records of the Rose Law Firm became of interest to this Committee, and for obvious reasons Mr. Kendall thought it necessary and Ms. Sherburne as well and Mr. Schuelke as well that this Committee be informed immediately of the discovery of these documents and they were turned over to us.

So what we have here in my view is an anomaly, at least as far as this Committee is concerned, of documents which are to a large extent confirmatory and corroborative of the First Lady and other witnesses' testimony and statements about the extent of work done for Madison and who did the work, and yet there is a question mark about how these records came to be produced, and in fact, records which for all expectations, in view of how old the underlying transactions were, would have been thought to have been destroyed by this time.

In a sense, we have the benefit of documents which are helpful and in their content, largely unremarkable. Mr. Chertoff and I may disagree to some extent about how important the documents are for one purpose or another, but I hope, Senator Mack, that before there is a discussion of anything as serious as charging obstruction of justice, that we look carefully at what has been requested and the motivations of people involved before we get to the next step of discussing that serious kind of allegation.

The CHAIRMAN. Senator Mack.

Senator MACK. Well, as I said earlier, the issue had been raised and I thought it was reasonable to ask for some clarification about that legal term. And I want to quickly add, I certainly was not in any way implying in my comments any question with respect to Ms. Huber. I'm sorry if I left that impression, I certainly didn't mean to. Again—

The CHAIRMAN. Let me if I might, Senator, echo the Senator's statements, and I think Ms. Huber knows that and I think her counsel knows that. We have indicated quite clearly that I want to commend you for the manner in which you testified today, as always, and I want to commend you for your candor. The fact that you have not had or feigned memory loss, which has been a rather frequent occurrence in this room, the fact that you have recalled with specificity dates and times that we would have no reason to be expected to.

You have been extraordinarily helpful, and I have no reason to believe, Ms. Huber, I want you to know this, and this Committee, and I think I echo the sentiments of Senator Mack, in the manner in which you've testified, that you found these documents and what you did and when you first discovered them, when you realized when you saw them the second time that these were documents that may have been under subpoena and what you did thereafter.

Senator Mack.

Senator MACK. Just a couple of points. One is that I am sure that there are others involved in this investigation that have subpoenaed those records specifically, and I am also quite aware that Mr. Chertoff did request the production of these documents prior to October 1995. And last I would say that I would imagine that

my colleague, Senator Faircloth, raised the issue, because we have all observed here the debate about what has happened to these documents.

We remember the hearings earlier that occurred last year with respect to what happened with the documents on July 20, the Secret Service testifying that Maggie Williams took documents or was seen carrying documents from Vince Foster's office to hers, that on the 22nd, there's testimony to indicate that Ms. Williams took documents from Vince Foster's office to the residence of the White House, so there is reason to believe, now that we have evidence that these billing records were found in the residence, in the Book Room, in an area of very limited access.

The CHAIRMAN. With Vince Foster's handwriting, I might add.

Senator MACK. That there are very, very serious questions, legal questions here, and it is for that reason that I asked the question that I did of the Chairman and of Counsel.

I thank you.

The CHAIRMAN. Thank you, Senator.

Mr. Chertoff, do you want any amplification?

Mr. CHERTOFF. I just wanted to respond briefly on the legal issue, it is unmistakable that the subpoena the Committee issued refers to any—or requires the production of any document that refers or relates to any of the following subjects, and these include, among others, the operations of Madison, which are clearly reflected on these billing records, as well as the issue of the policies and practices of the RTC regarding the legal representation of agencies with respect to Madison, and of course that relates to the conflict of interest issue.

So I think it would be a very dangerous argument for someone to make, Senator, that this subpoena did not call for the records.

Let me also observe in connection with this that in 1994 we established in the course of the hearings held by the Banking Committee that as early as February 1994, there was concern about the Madison issue with respect to the RTC investigation. If my memory serves me, there was a memorandum submitted by Mr. Eggleston, who was here a couple of days ago, to Mr. Ickes, and then transmitted to the First Lady, that was specifically entitled "The Rose Law Firm." The memo addressed among other things, and it was made part of the record, the issue of whether there was a problem with the Rose Law Firm in terms of its representation of the RTC and Madison.

So clearly these issues were the subject of investigation notoriously all over the place as early as 1994.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I just want to make an observation. First of all, I am relieved and gratified that both Senator Mack and you made this statement with respect to Ms. Huber that just occurred, because I was sitting here thinking that this was a rather clear example of harm that can occur to people by a tendency to want to make judgments ahead of facts.

The CHAIRMAN. If I might, Senator—

Senator SARBANES. Let me just finish.

The CHAIRMAN. If I might, I would like to note that I not only expanded on Senator Mack's observations just a few moments ago, but also even earlier.

Senator SARBANES. That's correct.

The CHAIRMAN. Number one, because I wanted this witness to know and have a comfort level; and number two, we appreciate her being here today, after giving us a deposition last night and testifying heretofore in another forum, her cooperation and her candor. I yield back.

Senator SARBANES. As the Chairman did, but I think it is very hard on the witness to have Members of the Committee start talking about obstruction of justice and contempt while she's sitting at the witness table. I mean, she's the one that's here and she's the one that's being carried on the television, and you know, not everyone watching is carefully listening and picking these things up. It simply underscores, it seems to me, the importance of getting in all the facts before you start making judgments.

Now, we brought Ms. Huber here today, and I think she's been very forthcoming and helpful to the Committee. Questions remain to be addressed, but I think it was extremely unfortunate to start engaging in this kind of discussion—we don't know what the facts are yet, the complete facts. Ms. Huber is helping to fill in that factual picture, and I simply regret that this took place with her at the witness table, and I want to underscore, as I indicated earlier, that I think she has been very forthcoming, and I think that needs to be understood so that none of this in any way spills over on her.

The CHAIRMAN. I appreciate my colleague's observations, and I think we have made it very clear for those who are watching and those who are reporting. I don't know how much clearer we could make it. We are appreciative of Ms. Huber's candor, of her testimony, of her cooperation, and I attempted to say that right from the beginning when we swore her in, so that is not a question.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me make one other point of clarification. I think that when terms like "obstruction of justice" are used, before we do that, we have some more facts and background to fill in and it should not be on the basis of what somebody thinks they recall from some memo or some other subpoena, but it ought to be on the basis of some pretty hard analysis of the actual requests and material, and then also on the basis of the additional facts which this Committee will try to find on this issue.

Let me ask one final question of Ms. Huber, because I think there may be some confusion relating to the issue of handwriting on the documents. Clearly, Ms. Huber, on the basis of the handwriting of the billing clerks that you saw on the documents, those notes were made back in 1992; would that be fair to say, or even earlier?

Ms. HUBER. Are you talking about Mr. Foster's writing?

Mr. BEN-VENISTE. No, I am talking about the Rose Law Firm employees handling it.

Ms. HUBER. Oh, that was done back in 1986 or 1985, or whenever they were doing the billing, that was their notes to themselves and the accounting department.

Mr. BEN-VENISTE. Now on the basis of the handwriting that appears, that you have identified as Mr. Foster's, let me ask you whether you understood that Mr. Foster was one of the people at the Rose Law Firm who was involved in answering the press inquiries during the 1992 election.

Ms. HUBER. Yes, I knew that.

Mr. BEN-VENISTE. Are you able to tell, on the basis of anything on the document or the content of Mr. Foster's notes, when he wrote those notes, whether those were written in 1992, or during the campaign, or at some point subsequent?

Ms. HUBER. I don't know. There is no date there.

Mr. BEN-VENISTE. You are not able to provide more information on that?

Ms. HUBER. No, I couldn't tell when he would write that.

Mr. BEN-VENISTE. I just wanted to clarify that. You don't know whether he made the notes in 1992, that someone had possession of them, or how they got to the White House?

Ms. HUBER. I don't know.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman, and welcome, Ms. Huber.

I think everybody has gone great lengths to make it clear that we very much appreciate your testimony and your willingness to come forward and help us try to piece together very important elements, and realize that your role was limited. But you have been very helpful to us in developing some practices which give us a better idea of what might have happened.

Now to follow up on Mr. Ben-Veniste's question, the notation on this document, DKSN 028934, which has the handwritten note, "HRC—this suggests first matter." You have said that this is Mr. Foster's handwriting; is that correct?

Ms. HUBER. Yes, sir.

Senator BOND. Based on that writing, and your knowledge of the practices and procedures of Mr. Foster, and the operations in both the Rose Law Firm and the White House, what actually was this? Was this a notation to himself, or would this have been a transmittal note? Does this indicate that Mr. Foster was sending these materials to HRC?

Ms. HUBER. Not necessarily, because—I don't know—it looks like maybe he was pulling out Mrs. Clinton's time and he put, like at the top, "HRC—this suggests first matter." He might—I don't know what Mr. Foster had on his mind but he could have been compiling a record out of the billing memos.

Senator BOND. So you don't have any knowledge whether this was, in fact, a transmittal note or a note to himself?

Ms. HUBER. No, I do not.

Senator BOND. With respect to the records—and you have been most helpful. What we are trying to do is to find out the chain of control over these records and how they got there. Obviously these are matters which you clearly don't have direct knowledge, but maybe we could go back and based on your knowledge of the activities and

the procedures at the Rose Law Firm, who would be the person who could ask the firm to pull up the billing records?

Ms. HUBER. The attorneys can.

Senator BOND. The attorney, and that normally—would that be the attorney involved in the case?

Ms. HUBER. It would be the attorney in the case. And Mr. Foster worked on this case.

Senator BOND. So Mr. Foster could have pulled it up?

Ms. HUBER. Yes.

Senator BOND. Mrs. Clinton could have pulled it up?

Ms. HUBER. Yes.

Senator BOND. Would it normally be pulled up by any attorney not associated with the case?

Ms. HUBER. I don't know.

Senator BOND. Based on your experience at the Rose Law Firm, though, it is customary—

Ms. HUBER. Yes, because I don't know why somebody else would want it.

Senator BOND. So it is an assumption that you would make that these records were all pulled together by an attorney from the Rose Law Firm who had been involved in the case?

Ms. HUBER. Yes.

Senator BOND. Now was it the practice at the Rose Law Firm that these billing records would be handled carefully; they would not—would they be made available generally, or would they be kept under the control of the attorneys involved and submitted to the client who is being billed?

Ms. HUBER. No, they—they were kept in the accounting department under tight control.

Senator BOND. And from the accounting department, the practice of the Rose Law Firm was that they should go only to the client?

Ms. HUBER. What do you mean, "go to the client"?

Senator BOND. In other words, these were not made available, generally, to other people in the firm or outside the firm; this was not a public document?

Ms. HUBER. No, it is not. And the client would only get the bill.

Senator BOND. Would the client get the detail?

Ms. HUBER. This bill right here, it is document 28934, that's what the client gets.

Senator BOND. The client would get that.

Ms. HUBER. Yes.

Senator BOND. I have in front of me 29016, or a number of pages like that, that show date, time, matter, value, and description of services rendered.

Ms. HUBER. What page is that?

Senator BOND. Page 29016.

Mr. SCHUELKE. Senator Bond, that's one of the documents that appears to be computer printout?

Ms. HUBER. Is that a computer printout?

Senator BOND. I think it is. I am not familiar with that. I am just asking, is this an internal—this is the kind of thing—

Ms. HUBER. That's internal. We don't give that to clients.

Senator BOND. That should not go out of the firm.

Ms. HUBER. No.

Senator BOND. OK, but—and the reason we—

Senator SARBANES. Can I ask, Senator, is that document in that pile of documents?

Ms. HUBER. I am sure it is. These are just mixed up. I am trying to locate it.

Senator BOND. I am just asking, Senator, what the status of these records are, and apparently, some of the records that were in the matters turned over by Ms. Huber represented not bills that were presented to the client. Some of them were bills submitted to the client, like this 28934 which she mentioned. Some are internal billing records. And I wanted to find out what would normally happen to these bills, and she has just told us that these—excuse me, these computer printouts are internal firm documents.

Senator SARBANES. I understand. My only question was whether that document is part of that pile of materials?

The CHAIRMAN. Yes.

Senator BOND. Yes, it is. The reason I asked that question, Senator Sarbanes, we are trying to find out how these materials came together, who had them, what happened to them from the time they were taken out of the Rose Law Firm to the time that they appeared apparently in August 1995, on a table in plain view.

Now the reason it is important to determine that is that we have had much testimony about the documents. You will recall that on Tuesday, the members of the White House defense team were talking with us about what they discussed in their meetings. "Vacuuming" was a noun rather than a verb. "Quietly" they told us was "quality." But none of them were able to describe the phrases in the notes, "Documents never know go out," or "Try and find out what is going on in the investigations."

And what we are trying to find out is, by the evidence of practices, who could have had access to these records, and where they went from whatever time they left the Rose Law Firm until they appeared on the desk where Ms. Huber found them. She obviously does not have direct knowledge so we are attempting—I am attempting to find out, to the best of her recollection, how these normally would be handled.

The CHAIRMAN. Now look—

Senator SARBANES. Mr. Kennedy, I might observe, did explain those items.

The CHAIRMAN. —I might say that we are going to have Mr. Clark here.

Ms. HUBER. He can explain it. He knows what they do with the records.

Senator BOND. I appreciate Ms. Huber's candor with us and I realize that there are many questions that you cannot answer, and I think, Mr. Chairman, that we will withhold any further questions until Mr. Clark comes.

Thank you.

The CHAIRMAN. Thank you, Senator.

Mr. Chertoff, do you have some questions?

Mr. CHERTOFF. I just have a couple of questions.

The CHAIRMAN. Senator Faircloth, you have an observation.

Senator FAIRCLOTH. Yes.

The CHAIRMAN. Take the shield off.

Senator FAIRCLOTH. We talked of documents and numbers and that sort of thing, but here are the billing records, plain and simple, we've recognized them. We've certainly all been impressed by the honesty and directness of Ms. Huber's testimony.

Now, she did not find these billing records on the turnstile at the Metro. She found them in the most secure room in the entire world, the third floor of the White House. That's where she found them. The most secure room in the world. If somebody can think of one more secure, I want him to tell me about it.

Access to this room is by maids and butlers; and Ms. Marshall, who is an attendant or whatever, helps Mrs. Clinton; Ms. Huber, who we have heard her testify today in exact detail of when and where and how she found them; and the Clintons, the President and Mrs. Clinton.

And yet, when I mentioned obstruction of justice, certainly I was not talking about Ms. Huber and then there was even some implication or trying to say that maybe the butler did it. The most secure room in the world, next door to Mrs. Clinton's office, I think we need to pursue who put them there.

Thank you.

The CHAIRMAN. Thank you, Senator.

I know we are over on our time but I think Mr. Chertoff has two questions, and then if you have any observations, I think we would be done with Ms. Huber.

Mr. CHERTOFF. I have two kind of cleanup questions, Ms. Huber. One is, Mr. Ben-Veniste asked you earlier about the policy at the firm when you were at the Rose Law Firm about retaining accounting records, such as the records you have before you.

Ms. HUBER. Yes.

Mr. CHERTOFF. Now the records you found at the White House were copies of printouts, and I understood you to say that originals would normally be kept for 7 years after the bill had been sent out?

Ms. HUBER. Yes, then they could be shredded.

Mr. CHERTOFF. So that after 7 years, they could be destroyed under the normal policy of the firm. That would mean that billings or an original billing printout that had been generated for bills in 1985 and 1986 should not have been destroyed before 1992 and 1993; is that right?

Ms. HUBER. If that's 7 years.

Mr. CHERTOFF. That's 7 years. I have done the math.

Ms. HUBER. But there are some that are 1981 in there and they could have been destroyed.

Mr. CHERTOFF. But bills for 1985 and 1986 would have to be kept until 1992 or 1993 at least, that would be the originals.

Ms. HUBER. According to our policies?

Mr. CHERTOFF. According to your policies at the firm. Again, let me echo, from my standpoint, there is no criticism about the way you handled this in January. You did absolutely the right thing. The only question I want to make sure we have clear in the record is, you called Mr. Kendall, he came over. Ms. Sherburne came over the same night?

Ms. HUBER. Yes.

Mr. CHERTOFF. Then at the direction of the lawyers—

Ms. HUBER. And Mr. Schuelke.

Mr. CHERTOFF. Was there anybody else that night who physically handled the records besides the four of you?

Ms. HUBER. No, sir.

Mr. CHERTOFF. Do you know who ultimately took possession of the original records after you had made the copies?

Ms. HUBER. Mr. Kendall.

Mr. CHERTOFF. Thank you, Ms. Huber.

The CHAIRMAN. Mr. Ben-Veniste or Senator Sarbanes.

Mr. BEN-VENISTE. I have nothing else. I just wanted to thank Ms. Huber and Mr. Schuelke for their cooperation.

The CHAIRMAN. Senator Mack.

Senator MACK. I have one additional question. Frankly, it is not related to this specific matter but it is something you said earlier in response to a question, and I can't remember the date but there was a time when you received a call from Mrs. Clinton, I think during the campaign, asking you if you would go down and get some personal files—some files—

Ms. HUBER. It was their personal financial records.

Senator MACK. Personal financial records from your office in the Rose Law Firm?

Ms. HUBER. I had them stored there.

Senator MACK. And you went down at approximately 11:30 that night?

Ms. HUBER. Yes.

Senator MACK. When you got there, you discovered the files were gone?

Ms. HUBER. Someone had already taken them to the campaign headquarters.

Senator MACK. What was your reaction to that when you got down there?

Ms. HUBER. I called her and told her, and she said in the meantime, she had found out they were already there—that someone was en route down there so she couldn't tell me they had already been taken.

Senator MACK. It did not bother you at all that someone went into your office and took files out of your office?

Ms. HUBER. They were a storage closet right by my office so I just assumed that it was somebody else that—because Mrs. Jones' records had been taken down there, too.

Senator MACK. Who is Mrs. Jones?

Ms. HUBER. Yes, the Whitewater that you had asked about earlier. It was the same night. Hers had been taken. So we all went down to the campaign headquarters and found our records there.

Senator MACK. I guess it would—do you know who took them?

Ms. HUBER. No.

Senator MACK. But when you got down there and found them at the campaign—

Ms. HUBER. They were working on them, looking through them.

Senator MACK. Who was "they"?

Ms. HUBER. I don't know the campaign workers, there were about eight people at a table working on them. I knew none of them.

Senator MACK. The people that were working on them were nobody that you recognized?

Ms. HUBER. No, I didn't work in the campaign so I knew very few people at the campaign.

Senator MACK. Did you, when you went down there and you said you found your files—

Ms. HUBER. Yes, I went in to ask if I could help, to show them anything about my records that I had, and they said no, they were taking care of it. So I went home.

Senator MACK. They didn't need your help?

Ms. HUBER. No.

Senator MACK. How did you know they had your files?

Ms. HUBER. I looked at the files, I looked at them.

Senator MACK. When you were looking at those files, did you see files of—what other files did you see?

Ms. HUBER. No, this was only their personal files, their checks and their paid bills and that type thing.

Senator MACK. And you didn't find anything with respect to Whitewater?

Ms. HUBER. No, I didn't have any Whitewater documents at that particular—in my particular files other than checks, canceled checks, that might have had some Whitewater things on it, some canceled checks.

Senator MACK. And they were going over those, were they?

Ms. HUBER. They went over the whole boxes, all the boxes I brought. I don't know what they did because I didn't stay.

Senator MACK. Thank you, Mr. Chairman.

The CHAIRMAN. May I ask you a question?

Ms. HUBER. Yes.

The CHAIRMAN. What day was that? I know you said it was 11:30 on the Saturday evening.

Ms. HUBER. It was in February. I don't know exactly what day it was. It was on a Saturday.

The CHAIRMAN. Where had you gone?

Ms. HUBER. I had been in the Arkansas Repertory Theater. It was on a Saturday night.

The CHAIRMAN. Do you remember what you saw there?

Ms. HUBER. No, I can't remember.

The CHAIRMAN. You are terrific, I mean, the fact that you even remember it was a Saturday and the Repertory Theater.

Ms. HUBER. I knew I was there.

The CHAIRMAN. Was it early February sometime?

Ms. HUBER. Yes, I think it was.

The CHAIRMAN. Let me ask you and I know Senator Mack has asked you who the people were who were there that evening, and you said you don't recall all of them, but that they were campaign workers. Would you recall if you saw Loretta Lynch?

Ms. HUBER. I cannot remember if I saw her. She wasn't at the table, so she may have been in another office that I passed by. I do not—I can't remember.

The CHAIRMAN. Do you know a Mrs. McFadden?

Ms. HUBER. No, I don't.

The CHAIRMAN. All right, and you don't recall anybody else?

Ms. HUBER. No.

The CHAIRMAN. Was Mrs. Wright there?

Ms. HUBER. I don't know. I didn't see her.

The CHAIRMAN. Let me again thank you.

Senator SARBANES. Ms. Huber, did you understand that they were working on these records because they were trying to respond to some press inquiries or press——

Ms. HUBER. No, I thought they were trying to respond to The New York Times newspaper articles, is what I thought they were responding to. I learned that 2 or 3 days later.

Mr. BEN-VENISTE. Ms. Huber, the records were the Clintons' personal records?

Ms. HUBER. Yes, this is their very personal checks.

Mr. BEN-VENISTE. You had every reason to believe they were taken down there with the permission of Mr. and Mrs. Clinton?

Ms. HUBER. Certainly.

Mr. BEN-VENISTE. And with respect to the Whitewater records that you mentioned relating to what Sue Cathey-Jones was supposed to be looking for as well, and those were Mr. Kennedy's files, and he has testified that those were the Clintons' personal records which they had obtained in some form relating to the Whitewater investment.

Similarly, did you have any reason to believe but that those materials were there with the full permission and authorization of Governor and Mrs. Clinton?

Ms. HUBER. Yes, I thought—I thought they had—it was OK for them to be there.

Mr. BEN-VENISTE. So it was their records that needed to be reviewed on a hurry-up basis. That had been done because you were at the theater and they were located where you had kept them, you came over to the firm, you saw that they were working on them, you said can I be of any assistance, they said we are OK, we have what we need, and that was that?

Ms. HUBER. That's all.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Again, Ms. Huber I want to thank you for your cooperation.

We stand in recess until 1:30 p.m.

[Whereupon, at 11:59 a.m., the hearing was recessed, to be reconvened at 1:30 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The Committee will come to order.

Mr. Clark, would you stand for the purpose of taking the oath.

**SWORN TESTIMONY OF RONALD CLARK
CHIEF OPERATING OFFICER, ROSE LAW FIRM**

The CHAIRMAN. Mr. Clark, we want to thank you for coming in today. I know that you have been here on a number of occasions, and that you were fully ready to testify last week, but due to the late hour, various scheduling conflicts, and the weather conditions, we were not able to get you on. We certainly apologize to you for any inconvenience that you may have had to go through, and we thank you for your appearance.

Do you have any statement that you would like to make?

Mr. CLARK. No, sir, I don't.

The CHAIRMAN. Then I will turn the matter over to Mr. Giuffra for examination.

Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Good to see you again, Mr. Clark. Good afternoon.

Mr. CLARK. Good afternoon.

Mr. GIUFFRA. Mr. Clark, you became the Chief Operating Officer of the Rose Law Firm in February 1993, when Mr. Kennedy became Associate Counsel to the President?

Mr. CLARK. That's correct.

Mr. GIUFFRA. You have been at the Rose Law Firm since you graduated from law school in 1980?

Mr. CLARK. That's correct.

Mr. GIUFFRA. In November 1993, you began to get press calls at the firm about Rose's representation of Madison?

Mr. CLARK. Yes.

Mr. GIUFFRA. You began to search for Rose records relating to the Madison representation?

Mr. CLARK. A very limited search at that time, that's correct.

Mr. GIUFFRA. Am I correct that the firm first received a subpoena approximately January 13, 1994?

Mr. CLARK. That's correct.

Mr. GIUFFRA. And that was from Mr. Mackay who was then at the Justice Department in Washington?

Mr. CLARK. I believe that's right, yes.

Mr. GIUFFRA. Then you received a second subpoena, in February 1994, from Special Counsel Robert Fiske; is that right?

Mr. CLARK. Yes, that's correct.

Mr. GIUFFRA. Both subpoenas called for the production of documents relating to Rose's representation of Madison?

Mr. CLARK. I believe that's correct, yes.

Mr. GIUFFRA. They would have called for billing materials that the firm had in its possession relating to Madison?

Mr. CLARK. I think we would have assumed that that would include the billing materials, yes.

Mr. GIUFFRA. In trying to comply with those subpoenas, Rose undertook substantial steps in order to locate documents, including billing records?

Mr. CLARK. That's correct.

Mr. GIUFFRA. In fact you spent thousands of dollars on legal fees, having people look through your files to see if they could find the billing records?

Mr. CLARK. Way beyond a thousand, yes.

Mr. GIUFFRA. Am I also correct that you were unable to locate a set of the Rose billing records?

Mr. CLARK. That's correct.

Mr. GIUFFRA. At least a complete set or anything approaching a complete set?

Mr. CLARK. Really no copies whatsoever of the bills or the billing memoranda.

Mr. GIUFFRA. There came a time in 1995 when you received a subpoena from the Senate, asking for certain documents as well?

Mr. CLARK. Yes, that's correct.

Mr. GIUFFRA. That subpoena also called for the billing records?

Mr. CLARK. Yes, it did.

Mr. GIUFFRA. And you again undertook to look for the billing records and could not find them?

Mr. CLARK. Correct.

Mr. GIUFFRA. You also received a subpoena from the RTC looking for the billing records?

Mr. CLARK. Multiple subpoenas, yes.

Mr. GIUFFRA. And you couldn't find them?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Am I correct that you first learned of the existence of these billing records when I brought them into your deposition about a week and a half ago?

Mr. CLARK. That's correct.

Mr. GIUFFRA. What was your reaction when I walked into the deposition with these billing records in my hand and showed them to you?

Mr. CLARK. I was somewhat surprised.

Mr. GIUFFRA. Stunned, in fact?

Mr. CLARK. Yes, gratified but stunned.

Mr. GIUFFRA. You don't have any idea how these billing records made their way to the third floor of the White House residence?

Mr. CLARK. No, sir, I don't.

Mr. GIUFFRA. You heard Ms. Huber's testimony today?

Mr. CLARK. I did.

Mr. GIUFFRA. You know Ms. Huber?

Mr. CLARK. Yes, I do.

Mr. GIUFFRA. She used to work at the Rose Law Firm?

Mr. CLARK. She did.

Mr. GIUFFRA. She was very highly regarded at the Rose Law Firm?

Mr. CLARK. By me she was, yes.

Mr. GIUFFRA. Am I correct that client billing materials should not leave the firm in the ordinary course?

Mr. CLARK. That's true. When you say "billing materials," certainly the internal billing memorandum should not leave the firm.

Mr. GIUFFRA. For example, the computer printouts shouldn't leave the firm?

Mr. CLARK. No.

Mr. GIUFFRA. It would be improper for somebody to take them out of the firm?

Mr. CLARK. Other than, you know, I take them home to work on them but for other purposes, no.

Mr. GIUFFRA. Now if I could turn your attention to a document—we will call it document 1, it is in your packet—it is the first page of the computer printout. Do you have that, sir?

Mr. CLARK. Yes, sir, I do.

Mr. GIUFFRA. In the upper left-hand corner, it states, "Report ID billpay 2/12/92, 8:41." Am I correct that that indicates that this client billing and payment history was printed off your computer system at 8:41 a.m. on February 12, 1992?

Mr. CLARK. Yes, sir.

Mr. GIUFFRA. So that would be during the 1992 Presidential campaign?

Mr. CLARK. Yes.

Mr. GIUFFRA. Now, Mrs. Clinton was the billing partner for the Madison matter?

Mr. CLARK. That's correct.

Mr. GIUFFRA. If a matter in the ordinary course is being handled by a partner and a first-year associate at the Rose Law Firm, the partner would normally review the associate's work?

Mr. CLARK. A partner would normally review a first-year associate's work, yes. It would not necessarily be the billing partner.

Mr. GIUFFRA. But some partner normally would—

Mr. CLARK. Some partner would, yes.

Mr. GIUFFRA. If Mrs. Clinton were the only partner working on the matter, one would think she would have been reviewing the associate's work?

Mr. CLARK. Yes, that's true.

Mr. GIUFFRA. If a client was dissatisfied with the Rose Law Firm's work, would they normally complain to the billing partner?

Mr. CLARK. In most cases, yes.

Mr. GIUFFRA. You have been involved in billing clients, I would imagine, since you became a partner at the Rose Law Firm?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Am I correct that it could be a violation of Federal or State law if someone—if a firm misbilled or overbilled a client?

Mr. CLARK. Certainly.

Mr. GIUFFRA. So, you try to be very careful in doing your billing?

Mr. CLARK. Yes.

Mr. GIUFFRA. In fact, it would be overbilling if a firm billed for work that it hadn't performed for a client?

Mr. CLARK. That's correct.

Mr. GIUFFRA. If we could put up the document that I've listed as document number 2, this is a bill of the Rose Law Firm; it's dated October 29, 1985. It is a poor copy but it is the best we have.

Mr. CLARK. I can see the October 29.

Mr. GIUFFRA. Up on the corner. This bill indicates that Rose charged the Madison firm for a matter called IDC, \$550.

Mr. CLARK. That's correct.

Mr. GIUFFRA. It indicates on the bill that the bill was paid.

Mr. CLARK. That's correct.

Mr. GIUFFRA. And indicates on the left-hand column the work that was performed by the lawyer in connection with this bill.

Mr. CLARK. Yes.

Mr. GIUFFRA. Let's just go down three entries where I have it highlighted. It says, "October 14, 1985, Mr. Thrash"—he is a lawyer at the Rose Law Firm?

Mr. CLARK. Yes, sir, he is.

Mr. GIUFFRA. Then it says, "attend closing."

Mr. CLARK. Yes.

Mr. GIUFFRA. And you would interpret this bill to indicate that on October 14, 1985, Mr. Thrash attended a closing in some way connected with the IDC matter?

Mr. CLARK. Yes, I would.

Mr. GIUFFRA. No other lawyer's time is reflected on this bill; is that right?

Mr. CLARK. No.

Mr. GIUFFRA. If we could put the third document up on the Elmo. This is a bill which appears to be dated, it is a bad copy—but January 30, 1986, to Madison Guaranty. It describes legal services rendered by the Rose Law Firm through January 30, 1986, by H.R. Clinton, T. Thrash, R. Donovan, K. Shemin, and J. Birch. Then it lists certain types of services that were performed in connection, again, with this IDC matter.

Mr. CLARK. Yes, it does.

Mr. GIUFFRA. On the bill it indicates that the amount that was billed for services is \$4,651.50.

Mr. CLARK. That's correct.

Mr. GIUFFRA. There are some disbursements, and disbursements are expenses that are incurred by a law firm.

Mr. CLARK. That's correct.

Mr. GIUFFRA. In this particular case, doing some Xeroxing, for a total bill of \$4,670.35; right?

Mr. CLARK. Correct.

Mr. GIUFFRA. Then it says on the bill that it was paid 1/30/86 in the full amount of \$4,670.35.

Mr. CLARK. Correct.

Mr. GIUFFRA. That was because you had a retainer agreement with Madison and the money was in a trust account, and you were able to deduct it from the amount that was in the trust account.

Mr. CLARK. That's correct.

Mr. GIUFFRA. The narrative portion of the bill, it would be Rose Law Firm policy to be accurate in describing the work that you had performed?

Mr. CLARK. Yes.

Mr. GIUFFRA. In fact, a law firm might have some sort of legal liability to a client if, unbeknownst to the client, the firm in the narrative portion of the bill did not accurately describe the services that the firm had rendered.

Mr. CLARK. Contrary to an agreement with the client, correct.

Mr. GIUFFRA. You try to be as careful as possible in drafting the narrative portion of the bill. Now in this bill, among the items that are listed are "Review contract for sale." Then it says further down, "Review changes in agreement," and "Attend IDC board meeting,"

"Attend closing," something that had been billed for in the prior bill. Then it says, "Meetings with Seth Ward."

In the October 29th bill someone had—Mr. Thrash's time had been billed for attending the closing, and would you think that perhaps this January 1996 bill reflects attendance at the closing by another Rose lawyer, because it wouldn't be proper to double bill for the same services by the same lawyer; am I right about that?

Mr. CLARK. Well, I think the January bill reflects pretty much all the time in the October bill.

Mr. GIUFFRA. Would this bill reflect different services—you had already billed, in the October 29th bill, for attending the closing?

Mr. CLARK. I don't believe the October 29th bill was ever sent to the client.

Mr. GIUFFRA. But the October 29th bill on its face indicates that it was paid.

Mr. CLARK. I think because the money was taken from the retainer account. I mean, it was a typical practice when we had retainers to occasionally submit internal bills or generate internal bills only to clean out balances in the retainer account, but wait until some definite date near the end of the transaction, or the end of our fiscal year to actually send the bill to the client.

I believe that you will find on the January bill that it reflects the time on this matter, both in the October and I think there was an earlier September bill, which is also reflected in the January bill.

Mr. GIUFFRA. OK. Now in preparing the narrative portion of the bill, the billing partner would rely upon the billing memorandum; am I correct?

Mr. CLARK. That's correct.

Mr. GIUFFRA. That's a computer-generated document at the Rose Law Firm.

Mr. CLARK. That's correct.

Mr. GIUFFRA. The billing memorandum would reflect the information contained on the lawyer's timesheets.

Mr. CLARK. Yes.

Mr. GIUFFRA. A lawyer's timesheet, for people who don't know, what you did in a particular time, for example, teleconference for half-hour with whomever you have the telephone call.

Mr. CLARK. That's correct.

Mr. GIUFFRA. It would be Rose Law Firm policy to be as accurate as possible in recording your time on the timesheet.

Mr. CLARK. That's correct, true, that's true.

Mr. GIUFFRA. If we could put up document 4 which is the billing memorandum for this IDC matter, appearing to be reflected in the January 30th bill. This billing memorandum describes the services that were rendered in connection with this IDC matter to Madison by the various lawyers who were involved; and it has, for example, RDT would be—I believe that would be Mr. Thrash; right?

Mr. CLARK. No, I believe that's Dave Thomas.

Mr. GIUFFRA. Excuse me. I'm sorry. Then it has Mrs. Clinton's time and then it has Mr. Donovan's time. And it lists, for example, between December 6, 1985 and December 24, 1985, seven telephone calls between Mrs. Clinton and Mr. Seth Ward.

Mr. CLARK. Correct.

Mr. GIUFFRA. Seth Ward is the father-in-law of Webster Hubbell.

Mr. CLARK. Yes.

Mr. GIUFFRA. Who was a partner of the Rose Law Firm.

Mr. CLARK. Mr. Hubbell was, yes.

Mr. GIUFFRA. Mr. Ward was involved in what has become known as the IDC/Castle Grande transaction. He was a principal in that transaction; correct?

Mr. CLARK. That's my understanding, yes.

Mr. GIUFFRA. If we could look at the time summary by attorney, that's down at the bottom of this billing memorandum. It lists Mrs. Clinton's billing during this time period reflected by the billing memorandum, 7.3 hours; and then it has a standard value which I assume is based on her hourly rate of \$125 an hour?

Mr. CLARK. It is based on the hourly rate as reflected in the computer.

Mr. GIUFFRA. So 7.3 times \$125 equals \$912.50.

Mr. CLARK. That's correct.

Mr. GIUFFRA. Now the other lawyers, Mr. Donovan, Mr. Thomas, also their time is reflected similarly under the standard value which is your hourly billing rate.

Mr. CLARK. Yes.

Mr. GIUFFRA. So far as you know Rose was billing Madison on a hourly basis; is that correct?

Mr. CLARK. I really don't know how they were being billed.

Mr. GIUFFRA. Do the records indicate it was an hourly—

Mr. CLARK. Based on these records, it would appear it was pretty much an hourly rate client, yes.

Mr. GIUFFRA. An hourly rate client means that if you bill 10 hours of work at \$100 an hour, you would send in a bill for \$1,000.

Mr. CLARK. Correct.

Mr. GIUFFRA. If premium billed client, you might do 10 hours of work but bill for \$5,000?

Mr. CLARK. That's right, or even on an hourly rate if you had an opinion letter or extraordinary travel or something, you might bill something on an other than standard hourly rate.

Mr. GIUFFRA. You have to work that out with the client?

Mr. CLARK. Subject to agreement with the client, that's correct.

Mr. GIUFFRA. For Mrs. Clinton, there is an amount to bill listed in handwriting of \$2,731.25. Do you see that down on the—

Mr. CLARK. Yes.

Mr. GIUFFRA. Then for Mr. Donovan, it's \$468; the standard value and the amount to bill is the same.

Mr. CLARK. That's correct.

Mr. GIUFFRA. Same thing for Mr. Thomas.

Mr. CLARK. Right.

Mr. GIUFFRA. For Mrs. Clinton, it appears the amount to bill, which is the amount you are going to bill the client, is \$1,818.17—75 cents higher than the standard value, in fact three times her standard value.

Mr. CLARK. It is higher. I will trust your math on it.

Mr. GIUFFRA. Which would be approximately three times the hourly rate.

Mr. CLARK. Well, it would be three times the hours reflected on this particular billing memorandum, that's true.

Mr. GIUFFRA. Now is one explanation for the fact that the amount to bill is three times higher than the hourly rate, that perhaps Mrs. Clinton had done additional work for Madison in connection with the IDC transaction that is not reflected in the billing memorandum?

Mr. CLARK. I would think that that's probably exactly what happened.

Mr. GIUFFRA. And your belief, based on what you know about Rose Law Firm policies and procedures, would be that Mrs. Clinton probably did additional work on the IDC matter that's not reflected in the billing memorandum?

Mr. CLARK. Correct. If you will notice, I mean, the date of the billing memorandum is dated January 21st; of course, the date of the bill is only January 30th. And it looks like the last time entry was January 15th and Mrs. Clinton's last time entry was January 14th. So I would anticipate at the time of preparing the bill there had been additional time rendered since the last date of the last bill which was added to this.

This is especially true at this time of the year which is the end of our fiscal year; especially in these years, our accounting department was very backed up because they were the same people that was generating the bills that were putting the timekeeping in. So typically we would have to manually add time during the last month of the year to properly reflect our bills.

Mr. GIUFFRA. Or perhaps Mrs. Clinton had done work earlier, and this work was not reflected in her time entries, and she realized the work was not reflected in her time entries and she added it to the bill?

Mr. CLARK. That's possible also, yes.

Mr. GIUFFRA. That sometimes happens; am I correct?

Mr. CLARK. That's possible also, yes.

Mr. GIUFFRA. The difference between the standard value and the amount to bill is about \$1,800, which at hourly billing rates of \$125 comes to about 14½ hours.

Mr. CLARK. OK.

Mr. GIUFFRA. So this would indicate that perhaps that was about 14½ hours more work done on the IDC matter than is reflected in the billing memorandum?

Mr. CLARK. I think that's correct, yes.

Mr. GIUFFRA. Looking at Mr. Thrash's entries which would be those that are indicated on the earlier bill, and looking at the initial bill, it would appear that Mr. Thrash put down that he had attended the closing, but he made no reference to—for example, if you compare the January 30th bill with the October 29th bill, in the January 30th bill, there is an entry for review contract for sale.

Now review contract for sale is not listed as a service that is rendered in any of the billing memoranda that we have or in the October 29th bill, so, by process of elimination, one would think that perhaps Mrs. Clinton had reviewed a contract for sale.

Mr. CLARK. I think there was one earlier—

[Witness conferred with counsel.]

I think there was one earlier bill on the IDC matter that may reflect that entry, and I know that we have produced copies of Mr.

Thrash's timesheets which describe that particular entry of reviewing the contract for sale.

Mr. GIUFFRA. How about review changes in agreement?

Mr. CLARK. I remember, because I was puzzled by this myself, in going back and looking at the September bill for IDC and the October bill, and Tommy's time—or Mr. Thrash's time, pretty much matched up word-for-word. What phrase were you looking for? I have Mr. Thrash's timesheets.

Mr. GIUFFRA. "Review contract for sale."

Mr. CLARK. Yes. He had a—looks likes on August 6, 1985, he had a time entry that says, "Review contract for sale."

Mr. GIUFFRA. How about, "Review changes in agreement"?

Mr. CLARK. Yes. On August—I believe it is August 9th.

Mr. GIUFFRA. Then he also attended the IDC board meeting; is that right?

Mr. CLARK. That's correct. That was on August 19th.

Mr. GIUFFRA. He also attended the closing, and that was the earlier bill.

Mr. CLARK. Yes.

Mr. GIUFFRA. OK, so it is a mystery to us, how these additional 14 hours that Mrs. Clinton billed were spent. You can't really tell from the billing memorandum.

Mr. CLARK. No, sir, you can't.

Mr. GIUFFRA. You can't tell when she spent the time?

Mr. CLARK. No.

Mr. GIUFFRA. She might have spent the time back in October, she might have spent the time in November, or she might have spent the time in January, you just don't know?

Mr. CLARK. I would have thought had she spent them in September or October they would have been included on the September and October internal bills that were rendered, but that's not necessary to the case, but that's what I would have thought. I mean, I would think that since the extra hours were on the January bill, it would have been time that she would have spent sometime after October 29th, which was the next previous bill.

Mr. GIUFFRA. Or the alternative is that this could be a premium amount that's being billed by Mrs. Clinton?

Mr. CLARK. I guess that's certainly in the realm of possibility. It doesn't look that way from looking at these bills to me.

Mr. GIUFFRA. So you would say it's got to be additional work, that she did approximately 14½ hours work on the IDC matter than are reflected in the billing memorandum.

Mr. CLARK. Yes, I would think it is unrecorded hours, correct.

Mr. GIUFFRA. Now am I correct that in 1985 and 1986 the primary factor in determining a partner's compensation in the Rose Law Firm was fee credits?

Mr. CLARK. Primarily, yes.

Mr. GIUFFRA. Basically your billing is the same thing as your fee credit?

Mr. CLARK. Well, there was a large correlation but certainly not exclusively, no. There were a number of instances where your fee credit would not necessarily match up with the amount of time you would actually put in the bill, but there was a strong correlation between the two.

Mr. GIUFFRA. The greater your fee credits the greater your compensation?

Mr. CLARK. Eventually, yes; not in that particular year.

Mr. GIUFFRA. So in this particular instance, for example, if Mrs. Clinton had either done premium billing or done additional work, that would have increased her compensation at the end of your fiscal year?

Mr. CLARK. To a very limited extent, yes.

Mr. GIUFFRA. To some extent though?

Mr. CLARK. Yes.

Mr. GIUFFRA. These bills indicate that the matter is something called IDC. If we could put up document number 6 on the Elmo. This is a Rose Law Firm voucher; am I right?

Mr. CLARK. That's correct. [Reply corrected to, "No."]

Mr. GIUFFRA. This voucher, the amount is \$4,670.35; right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. That's the same amount that the firm had billed Madison in the January 20, 1996 bill; am I right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. So those amounts correlate.

Now it says under something called "account name," it looks like "RES," and this is a poor copy, "for DEV/UTIL," utility perhaps, "CG." Do you see that?

Mr. CLARK. I do. It is difficult to read, but I do see it.

Mr. GIUFFRA. You see the CG though?

Mr. CLARK. Yes.

Mr. GIUFFRA. Do you have any explanation for what the CG stands for?

Mr. CLARK. No.

Mr. GIUFFRA. Would the best explanation probably, given what we know, that CG stands for Castle Grande?

Mr. CLARK. I have no idea what it stands for.

Mr. GIUFFRA. Can you think of any other explanation for what CG stands for?

Mr. CLARK. No, but I haven't given it any thought until this very moment.

Mr. GIUFFRA. Am I correct that billing partners usually work with your accounting department in preparing your bills; right?

Mr. CLARK. Somewhat, yes.

Mr. GIUFFRA. In fact your accounting department, I think Ms. Huber testified to this in her deposition yesterday, will visit the partners and discuss the billing materials and how they should bill the client?

Mr. CLARK. In some cases, yes.

Mr. GIUFFRA. So something called account name, in drafting an account name that would be something that the billing—excuse me, that the accounting department would do in consultation with your billing partner?

Mr. CLARK. Well, generally the billing partner would determine the name of the account. This looks like a clerk's entry on trying to clear out the—either the trust account or the unapplied account, so I mean—

Mr. GIUFFRA. This may be based on what the billing partner told the clerk; correct?

Mr. CLARK. It could be or it could not be. [Reply corrected to, "No."]

Mr. GIUFFRA. Let's take a look at the next document, number 7.

The CHAIRMAN. Hold on just a second, Mr. Clark. Let me go back to that. This is the first time I have seen this. "RES"—resolution for development. Is that development? And utility, CG. Now what other reasonable interpretation would you put to that CG?

Mr. CLARK. I am sorry, Mr. Chairman. I guess my copy is not clear. What were you reading of the first three words?

The CHAIRMAN. I am not even sure but I see, "Development utility CG." Do you see that?

Mr. CLARK. Yes. Yes.

The CHAIRMAN. It's right up on the Elmo, in the third line.

Mr. CLARK. I see it.

The CHAIRMAN. I mean, how do you read that?

Mr. CLARK. Well, actually when I first saw the initials, I thought it was the initials of one of my former partners, but——

The CHAIRMAN. Give me a reasonable interpretation of that. Doesn't it seem to be identifying the work as Castle Grande? And when you look back, weren't they doing work on development, sewer, and utility, et cetera, and isn't that utility?

Mr. CLARK. Senator, that makes sense to me. The only way it reads, and I will disagree, is that in the documents that I have seen——

The CHAIRMAN. Do you have a partner by the name of CG?

Mr. CLARK. Yes.

The CHAIRMAN. You do?

Mr. CLARK. We did at that time.

The CHAIRMAN. Who's that?

Mr. CLARK. C.J. Giroir.

The CHAIRMAN. Did he bill CG?

Mr. CLARK. G-i-r-o-i-r, Giroir.

The CHAIRMAN. Did he work on this?

Mr. CLARK. I don't think so.

Mr. GIUFFRA. We have another document. Let's put up 7. This is a very poor quality copy and I want to apologize to everyone. It says Madison Guaranty Savings & Loan. This is a Rose Law Firm document; correct, sir?

Mr. CLARK. Yes, it is. [Reply corrected to, "No."]

Mr. GIUFFRA. On the left-hand side there is listed, and you can barely make it out, it looks like a number of 1, 2, 3, 4, 5, those would be your matter numbers?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Down at the bottom, it says I believe that's number 5; right?

Mr. CLARK. Yes.

Mr. GIUFFRA. Then it says IDC next to it?

Mr. CLARK. Correct.

Mr. GIUFFRA. You can barely make it out, but I think this is probably the best reading, it looks like \$4,670.35. Would you think that's about right?

Mr. CLARK. It looks correct, yes.

Mr. GIUFFRA. Which would be the same amount that was billed to Madison in January 30, 1996; correct?

Mr. CLARK. That's correct.

Mr. GIUFFRA. So the numbers key off. And then again you can barely make it out but—to the left, it looks like HC. Would that be Mrs. Clinton's initials?

Mr. CLARK. Yes.

Mr. GIUFFRA. Going to the end, it says CG again, and perhaps—it is hard to make out the rest of it, but you again see the RES, and it looks like a DEV is in there, and UTIL, and then CG again. Would you agree with that, sir?

Mr. CLARK. As difficult as it is to read, that looks correct, yes.

Mr. GIUFFRA. You are seeing again—on this particular document, you are seeing matter 5 IDC, you are seeing Mrs. Clinton's initials, you are seeing \$4,670.35 which is the amount that's billed in January, and then you are seeing a description of the work with, at the end, the initials CG.

Mr. CLARK. Correct.

Mr. GIUFFRA. The client is Madison Guaranty?

Mr. CLARK. Correct.

Mr. GIUFFRA. Let's put up document number 8. And again part of the problem that we have had in doing this is that the records are missing or we don't have complete records. This is another Rose Law Firm document, you would agree; correct?

Mr. CLARK. Yes, it is. [Reply corrected to, "No."]

Mr. GIUFFRA. Under account name it says, it looks like "RES," period, "CG utility."?

Mr. CLARK. Correct.

Mr. GIUFFRA. Or "resolution CG utility"?

Mr. CLARK. Correct.

Mr. GIUFFRA. The CG is there and then down under the description of the work, it says Rose Law Firm IDC work?

Mr. CLARK. Correct.

Mr. GIUFFRA. You have IDC work and CG under the account name on the same document?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Again indicating that there is a connection between the IDC work and the CG work or Castle Grande work?

Mr. CLARK. That appears correct, yes.

Mr. GIUFFRA. That would be your interpretation of these three documents we have just shown you?

Mr. CLARK. Certainly of this document which is more clear. It would look like the top would say CG utility which is tied together. My earlier comment was we internally referred to it as IDC, but that was based simply on history I have learned the last 2 years. That's not—

Mr. GIUFFRA. You weren't working on the matter at the time?

Mr. CLARK. No, but I agree with you that that looks like what that is.

Mr. GIUFFRA. It looks like someone who was involved in the billing of this matter called it CG or Castle Grande?

Mr. CLARK. Correct. [Reply corrected to, "No."]

Mr. GIUFFRA. That would be your best interpretation?

Mr. CLARK. I think that's right. [Reply corrected to, "No."]

Mr. GIUFFRA. Mr. Chairman, I have a number of other areas, but maybe I should turn it over.

The CHAIRMAN. How long do you have to go? If you feel that you want to, and can conclude in a reasonable period of time, I think we can save a lot of time by finishing up completely. Then we can give whatever time to Senator Sarbanes. Or, if you want to just turn it over now, we will turn it over now. Why don't we turn it over right now.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good afternoon, Mr. Clark.

Mr. CLARK. Good afternoon.

Mr. BEN-VENISTE. You indicated that when you learned that the White House had located the billing records, the time records for individual attorneys and copies of certain details of bills, you were both gratified and stunned that they had turned up; correct?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. According to the document destruction policy in place at the Rose Law Firm, how would such records have been treated?

Mr. CLARK. Generally speaking, it's—I mean, if you ask me today to go back and find any billing records for any client in 1985 and 1986, it would probably be less than a 50/50 chance that we would find it—find those records at this point. And that probably would have been true in—as early as 1992, or 1993.

Though we handle our clients' records very carefully, or try to, we are less careful with our own internal documents. We have—we may take great efforts to try to clean out that information as we can, and have taken efforts, both throughout the late 1980's and early 1990's, to get rid of all that excess paper as possible. So, it's—they might be there or they might not.

Mr. BEN-VENISTE. OK, so in a sense it was remarkable to some extent that these documents were maintained even as photocopies somewhere?

Mr. CLARK. Yes.

Mr. BEN-VENISTE. And you were gratified that they were found because there had been so much interest in what they actually showed, that now you are in a position to work rather from speculation or unfounded accusations, but rather from actual documents?

Mr. CLARK. Well, I was gratified in two respects. One which proved false unfortunately, but I was first gratified, as I think the people who were taking my deposition will recognize, is that I think everyone in that room thought that those were photocopies of the originals. And so my first impression was we had found the originals, which eliminated any prospect that we had destroyed them. That obviously has turned out to be false. They weren't the originals so we still have that issue. Last I was gratified that finally, after 2 years of my partners having to look at 10- and 11-year-old documents to try to reconstruct their memory, we would have a record of exactly what we did.

Mr. BEN-VENISTE. Fine. Now in connection with this very much discussed issue of how many hours Mrs. Clinton spent working for this client on various matters during the 1985–86 time period, I take it you did a computation of how many hours were involved?

Mr. CLARK. Rough, yes.

Mr. BEN-VENISTE. That came to approximately 60 hours, right?

Mr. CLARK. It did on the billing memorandum. Again, I had already identified some of the matters that Mr. Giuffra had pointed out and thought there were probably some hours that weren't on those billing memorandum.

Mr. BEN-VENISTE. So that the hours that Mr. Giuffra had been talking about, this 14 and change hours or so, were already included when you came to the total number of 60; isn't that so?

Mr. CLARK. Somewhere in that area, yes.

Mr. BEN-VENISTE. This is not anything that adds in any way to the total number of hours that Mrs. Clinton spent over a 15-month period for this client; is that fair to say?

Mr. CLARK. Roughly, that's correct, yes.

Mr. BEN-VENISTE. Was the Madison Bank a substantial, significant client of the Rose Firm in 1985?

Mr. CLARK. It was very insignificant.

Mr. BEN-VENISTE. In terms of the total numbers of hours expended by all lawyers of the Rose Law Firm on this particular client, can you quantify it as any percentage of the total amounts of time spent in 1985?

Mr. CLARK. It is very difficult for me, Mr. Ben-Veniste, to quantify it in terms of hours and I just don't think that way, I do think in terms of dollars. And I mean, if you look at the revenues of the firm in 1985 and 1986 and compare that to the total collection of this client, it was somewhere between 1/1000 and 2/1000 of our total business during that time period. So from my perspective, sort of a global look, we spent a lot more time—

Mr. BEN-VENISTE. 1/1000 of the total billing for that year?

Mr. CLARK. Let me be very clear. What I was looking at was the \$21,000 total that was on the billing and payment history and comparing that to the revenues for same period. And it was somewhere between 1/1000 and 2/1000, somewhere in there.

Mr. BEN-VENISTE. I understand. There were many, many other clients of the firm way ahead of Madison in terms of total billing.

Mr. CLARK. Yes, sir.

Mr. BEN-VENISTE. In terms of the question of removing a copy of timesheets from the firm, I take it you would not find fault with an attorney, who wanted to check the amount of time he or she spent during a particular year, reviewing those records?

Mr. CLARK. No, certainly not.

Mr. BEN-VENISTE. In terms of the issues that came up during the 1992 campaign, where there were a number of allegations about the Rose Law Firm's representation of Madison, there was a great interest in trying to answer questions that had been put by the press?

Mr. CLARK. That's my understanding, yes.

Mr. BEN-VENISTE. And, if you didn't know specifically, I am sure you had reason to believe that people would be trying to find documentary evidence to answer those questions as completely and fully as possible?

Mr. CLARK. I was very aware of the stories, though I was not involved in it and we were very concerned about the inaccuracies that were contained in the stories.

Mr. BEN-VENISTE. Were you aware that Mr. Foster was one of the people associated with the firm who was trying to get answers to those questions?

Mr. CLARK. I was not aware at that time, no, sir.

Mr. BEN-VENISTE. Have you since become aware?

Mr. CLARK. Yes.

Mr. BEN-VENISTE. You indicated that it is not at all surprising that an attorney would add in time that had not been reflected in the detailed billing in order to catch up in time to get a bill out to the client so that the client would receive a bill for the total amount of time spent?

Mr. CLARK. That's correct, especially this time of year.

Mr. BEN-VENISTE. Lest there be any mystery about this, can you conceive of a scenario whereby Mrs. Clinton specifically billed for time that she did not detail in her bills, because she was up to some nefarious purpose in providing information to the Madison Bank about how to do something improper?

Mr. CLARK. No, sir, I have no reason to believe that.

Mr. BEN-VENISTE. Under that scenario, you would bill for the time but not disclose the specifics, advise client to do so-and-so improper transaction?

Mr. CLARK. I have absolutely no reason to believe that that was the case.

Mr. BEN-VENISTE. OK. In connection with the matter that was put to you about CG utility, these documents don't appear to have Bates stamps on them, but I am looking at one that has a small 8 in the right-hand corner—

Mr. CLARK. Yes, I have it.

Mr. BEN-VENISTE. —to which you referred earlier?

Mr. CLARK. Yes.

Mr. BEN-VENISTE. First of all, there is a partner at your firm with the initials CG, Mr. Giroir; correct?

Mr. CLARK. There was at this time.

Mr. BEN-VENISTE. There was at that time, and according to the records we received, he did perform some work on the Madison matter. But putting that aside, I think the issue of confusion that has surfaced with respect to this matter of 11 years ago between Castle Grande and IDC is perhaps epitomized in this document, because here, CG and IDC work are sort of interchanged, but at this bottom, it says Rose Law Firm IDC work.

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. Now if we look at what has been marked DKSJN 029010, which is a bill of January 30th or through January 30, 1986.

Mr. CLARK. Yes, sir.

Mr. BEN-VENISTE. I am not going to read through it all but it says, "Memo about utility status." I am sort of three-quarters of the way down.

Mr. CLARK. OK.

Mr. BEN-VENISTE. Then it says, "Conferences with Seth Ward regarding purchase from Brick Lyle and proposed industrial development or site research." Do you see that?

Mr. CLARK. Yes, sir.

Mr. BEN-VENISTE. Do you know what the industrial development issues were with respect to the IDC property?

Mr. CLARK. Only to the extent that it is my understanding from, I think, something maybe that was in the Pillsbury Report, that once Madison acquired this property, there was some intent to do some development on it. That is—

Mr. BEN-VENISTE. Do you recall issues being raised with respect to whether or not a brewery could be built with a tasting room—

Mr. CLARK. Yes, I do.

Mr. BEN-VENISTE. —that implicated some county restrictions as to whether this would be proper?

Mr. CLARK. A dry or wet township issue.

Mr. BEN-VENISTE. And that there was another issue with respect to sewer and water?

Mr. CLARK. Yes, the question of whether there was a utility that had been properly run.

Mr. BEN-VENISTE. Does this description appear to incorporate those issues?

Mr. CLARK. Yes, sir, it does.

Mr. BEN-VENISTE. Now you mentioned the Pillsbury Report. Let me ask you whether the Pillsbury Report is the report on the representation of Madison Guaranty Savings & Loan by the Rose Law Firm that was produced by Pillsbury Madison & Sutro, of which my former colleague, Jay Stephens, is a partner. And in that report, there was a reference to some work that is reflected in the time records that we have regarding an option agreement that was prepared in May 1986. Are you familiar with that?

Mr. CLARK. Yes, I am.

Mr. BEN-VENISTE. Do you think that you can find it in the time records?

Mr. CLARK. In the full time records, I think.

Mr. BEN-VENISTE. If I can help you—

Mr. CLARK. I found it.

Mr. BEN-VENISTE. —it's 5/1/86.

Mr. CLARK. Actually, I am looking at the billing memorandum, just a second. Now I have the bill, yes.

Mr. BEN-VENISTE. OK, and looking at the bill, and the time record printout for May 1, 1986, where there's a reference under HRC, Mrs. Clinton's initials?

Mr. CLARK. Yes, sir.

Mr. BEN-VENISTE. For 2 hours?

Mr. CLARK. Yes.

Mr. BEN-VENISTE. Can you read that?

Mr. CLARK. It says, "Conference with Seth Ward, telephone conference with Seth Ward regarding option, telephone conference with Mike Schaufele, prepare option."

Mr. BEN-VENISTE. All of that is a total of 2 hours; right?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. Now if we turn to—because there has been some question raised about the option in the context of the initial agreement for the purchase of land between the Madison Bank and Mr. Ward, let me read from page 77 of the Pillsbury Madison & Sutro Report, which has now been made a part of our record in this Committee. It says, "The only solid evidence tying the Rose Law

Firm to this acquisition," meaning the earlier acquisition, "is evidence of the innocent activity of participating in the drafting of the purchase agreement." And that was done by?

Mr. CLARK. Primarily Mr. Thrash.

Mr. BEN-VENISTE. Mr. Thrash, then a partner in the firm?

Mr. CLARK. Then a partner, yes.

Mr. BEN-VENISTE. "While some evidence suggests that Hubbell could have had a role in the drafting of the September 24, 1985 letter between McDougal and Ward, nothing proves he did, much less he did so knowing it to be wrong.

"Similarly, when Mrs. Clinton seemed to have had some role in drafting"—I'm sorry, I misread that. "Similarly, while Mrs. Clinton seems to have had some role in drafting the May 1, 1986 option"—that's the option—that's the work reflected in the billing record; is that correct?

Mr. CLARK. Yes.

Mr. BEN-VENISTE. "Nothing proves she did so knowing it to be wrong, and the theories that tie this option to wrongdoing, or to the straw man arrangements, are strained at best." Now do you have any reason to disagree with the conclusion reached here by the Pillsbury Report?

Mr. CLARK. No, sir.

Mr. BEN-VENISTE. Mr. Kravitz.

Mr. KRAVITZ. Thank you.

Along those same lines, Mr. Clark, you have heard what the Pillsbury Report concluded as to whether there was any evidence that the Rose Law Firm participated in the acquisition at issue, the acquisition of the Castle Grande project. Have you, yourself, in the past couple of weeks since the Rose Law Firm billing records appeared at your deposition, had an opportunity to review those records?

Mr. CLARK. Yes, I have.

Mr. KRAVITZ. Have you reviewed those records particularly with regard to whether or not the Rose Law Firm did any work regarding or relating to allegedly fraudulent aspects of that purchase?

Mr. CLARK. I have, including discussing it with the people who actually did the work.

Mr. KRAVITZ. Have you reached any conclusion, based on your review of those billing records and on your discussions with the people who actually did the work on the IDC matter, as to whether your firm had any involvement in any of the allegedly fraudulent aspects of that purchase?

Mr. CLARK. My conclusion is absolutely not. I mean, I think the records are very clear as to the work that we performed, the time was kept very meticulously and was billed so. And there is no indication that the evidence is to the contrary.

Mr. KRAVITZ. Just so we are clear what we are talking about, what is the allegedly fraudulent aspects of this purchase?

Mr. CLARK. Well, I mean, I am not exactly sure I know. I mean, based upon press reports, it is my understanding that there were some allegations that Mr. Ward was acting as a straw man for this purchase, that he was not actually the—the economic owner of the land, though he was the title owner. That's really the only one I

know of. There may have been something subsequent to that that I am not aware of.

Mr. KRAVITZ. Have you been able to review any of the records of the actual transaction to determine what time—what date it was on which this alleged fraud may have occurred?

Mr. CLARK. Well, if you are—I assume you are saying that the fraud would be if there was some under-the-table agreement about how to structure this transaction, to get around something, if that's the fraud, then certainly based upon these records, I mean, I think our firm worked somewhat on the matter in August, to some insignificant period, or July, maybe even as early as July. I have seen a couple of memos referred to in the newspaper, and I think my counsel has provided me with copies of some structuring memos that were internally done in Madison, which was at a time period that we weren't really doing any work on this document.

Mr. KRAVITZ. Let me ask you about that. Are you familiar with internal Madison records which indicate that this allegedly fraudulent agreement between Mr. McDougal and Mr. Ward was reached on September 3, 1985?

Mr. CLARK. Yes, that's my recollection.

Mr. KRAVITZ. Are you familiar also with a letter dated September 24, 1985, memorializing that agreement between Mr. Ward and Mr. McDougal?

Mr. CLARK. Yes, that's the date of that agreement.

Mr. KRAVITZ. Now if you work off those two dates, September 3 and September 24, 1985, can you tell us whether your firm did any work relating to the IDC project on either of those dates?

Mr. CLARK. No, it looks like the closest date would have been September 30th.

Mr. KRAVITZ. That would be the closest date after the agreement was reached between Mr. Ward and Mr. McDougal, and was then memorialized on the 24th of September?

Mr. CLARK. That's correct.

Mr. KRAVITZ. Did your firm do any work on the IDC matter between those two dates, September 3 and September 24, 1985?

Mr. CLARK. No.

Mr. KRAVITZ. What was the last date before September 3, 1985, on which your firm, according to the billing records, did any work on the IDC matter?

Mr. CLARK. It is in mid-August, August 19, 20, like that.

Mr. KRAVITZ. So there are several weeks before September 3 during which your firm did no work, then there is no work done by your firm between September 3 and September 24. Then it's approximately another week after all that has already occurred that your firm finally starts to do some work on the IDC matter again?

Mr. CLARK. That's correct. And let me say the attorneys working on this were our real estate lawyers. They were not familiar with structuring transactions, or S&L regulation, they were dirt lawyers as we affectionately call them.

Mr. KRAVITZ. Have you had an opportunity to review the letter that—the confirming letter between Mr. Ward and Mr. McDougal of September 24, 1985?

Mr. CLARK. I have some time ago, yes.

Mr. KRAVITZ. Based on your review, is it your belief that any lawyer was involved in drafting that letter?

Mr. CLARK. My recollection of it, it was not particularly articulate, not that all lawyers are articulate, but—

Mr. KRAVITZ. Did it appear to be a lawyerly letter?

Mr. CLARK. No, not really.

Mr. KRAVITZ. Is that consistent with the records indicating that no lawyers from the Rose Law Firm were involved in this allegedly fraudulent aspect of this purchase?

Mr. CLARK. Yes, it is consistent.

Mr. KRAVITZ. Now, Mr. Ben-Veniste asked you previously about what the records show relating to Mrs. Clinton's contacts with Seth Ward in December 1985 and January 1986. Is it fair to say that those contacts were several months after this allegedly fraudulent aspect of the purchase occurred?

Mr. CLARK. Yes, sir.

Mr. KRAVITZ. Can you tell from what was going on with the IDC project in December 1985 and January 1986 whether Mrs. Clinton's contacts with Mr. Ward could have had anything do with this fraudulent aspect of the purchase?

Mr. CLARK. No. I mean, it was obvious that we were performing some of this miscellaneous research on the brewery, and on the utility issue. And so that's the likely purpose of the contacts, but I really don't know why she was contacting—

Mr. KRAVITZ. In fact, there was a lawyer at the firm named Rick Donovan who was principally involved in doing legal research at that time, December and January?

Mr. CLARK. That's correct.

Mr. KRAVITZ. Is it your belief, based on your review of the records and your knowledge of the way the firm works, that Mrs. Clinton's time during those periods, in addition to speaking with Mr. Ward, would most likely have been reviewing Mr. Donovan's work?

Mr. CLARK. That's what it appears to reflect, yes.

Mr. KRAVITZ. Those were on legal issues relating to whether the county was wet or dry, and something relating to a sewer system?

Mr. CLARK. That's correct.

Mr. KRAVITZ. Nothing to do with the fraudulent aspects of the purchase?

Mr. CLARK. There's no indication of that in the billing records.

Mr. KRAVITZ. Just to be clear, Mr. Giuffra asked you earlier about whether—specifically with regard to DKSX 029011, that was the bill I think at the end of January or the billing records for the end of January 1986, on which the handwritten figures were on the forms. You testified that certainly a likely reason for those handwritten figures was that Mrs. Clinton had performed extra work after January 15, 1986, that had not shown up yet in the computerized billing records; is that correct?

Mr. CLARK. That's correct.

Mr. KRAVITZ. Is there any reason to believe that those extra hours that Mrs. Clinton likely billed in late January 1986, had anything to do with any fraudulent aspect of a transaction?

Mr. CLARK. No, sir.

Mr. KRAVITZ. It is much more likely that those hours as well had to do with wet/dry issues and other legal matters having nothing to do with the fraudulent aspects of the transaction?

Mr. CLARK. Based upon the time entries that were recorded, it would be consistent with the work that was being done at that point, yes.

Mr. KRAVITZ. Thank you. Senator, that's all I have.

Senator SARBANES. Senator Murray.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

I just really have one area and I think you may have partially answered this before but I want to make sure for my own information. I have heard a lot of speculation in the past that some of the Madison-related documents had been destroyed or shredded by Rose Law Firm employees, and I just want you to answer the questions again for me. Can you tell this Committee if you were aware of any such activity?

Mr. CLARK. No, ma'am, not at all.

Senator MURRAY. Does the Rose Law Firm have a standard policy on the destruction of documents? And could you tell us what that is?

Mr. CLARK. Well, we do have a policy concerning the destruction of documents. As far as client files that we are speaking of, I mean, it is pretty much up to the individual attorney to account for his or her client files. We are consistently encouraging our attorneys to get rid of as much paper as possible, because the problems we have had really since the early 1980's in our remote storage it is just crammed full. And as I have spoken to earlier, with the discovery of the billing records, which granted our only copies, I mean, I think we have basically accounted for all of our Madison files now for the most part.

Senator MURRAY. As far as you can tell, absolutely no Madison-related documents were destroyed; is that correct?

Mr. CLARK. Well, "accounted for" is different than "destroyed." We certainly know that in a memorandum dated 1988 that certain of Mrs. Clinton's files were destroyed relating to Madison along with hundreds of other files that were destroyed at that time. So when I say, "accounted for," I think we know what basically has happened to all of our Madison files.

Senator MURRAY. I appreciate that. One other thing. I'm not an attorney and I have heard "billable hours," but I've never seen it written out before. I just wanted to ask you, this is pretty standard way of writing out billable hours on the timesheet records?

Mr. CLARK. Yes, ma'am, it is.

Senator MURRAY. I am just curious. I see a lot of 2 hours, 1½ hours. If you do 20 minutes at a time, is that considered a half-hour? If you do 45 minutes, is that considered an hour, or how do you do that?

Mr. CLARK. No, we try to be as accurate as possible. I think the smallest unit we use is a 6-minute unit, 10th of an hour. But, you know, again, most people, what they will do is they will at the end of the day try to reconstruct their time. You don't sit down after every telephone call and write it down. You try to be as conserv-

ative as possible, but you round up, you round down occasionally, based upon your memory.

Senator MURRAY. Sixty hours is what we come up with. For my own information, 60 hours over a 15-month time period, is that significant in your mind as Chief Operating Officer?

Mr. CLARK. Not in my practice, no.

Senator MURRAY. Thank you very much.

The CHAIRMAN. Mr. Kravitz, did you have a follow-up question?

Mr. KRAVITZ. Yes, I did, Senator. Thank you.

Mr. Clark, you mentioned in 1988 some of Mrs. Clinton's Madison files were destroyed by the firm. Can you tell us what the circumstances were under which those files were destroyed?

Mr. CLARK. Sure. As I said, we have continually had difficulty with our remote storage and at 1988 it reached sort of a critical point, so at that point we sent a memorandum to all members of the firm along with their internal lists of the documents that they had in remote storage and asked them what documents we could retain and what should be destroyed, encouraging to try to get rid of as many as we could. Mrs. Clinton received those lists much like we all did—I received one also—and you indicated on that list, you know, retain these files, destroy these files, microfilm—actually, we weren't microfilming in those days. Those went back to remote storage. And we still maintain those lists and have produced pages of them to various people.

Mr. KRAVITZ. Is it fair to say, then, Mrs. Clinton's Madison files, the ones that were destroyed in 1988, were just a small number of files among a very large number of Rose Law files that were destroyed at the same time?

Mr. CLARK. That's correct.

Mr. KRAVITZ. All in the regular course of business?

Mr. CLARK. Yes.

Mr. KRAVITZ. Was there anything unusual or suspicious about the destruction of those Rose documents?

Mr. CLARK. Nothing whatsoever, no.

Mr. KRAVITZ. Thank you.

The CHAIRMAN. Mr. Clark, I am just going to take a minute because I want to get this straight. Could you look at the record that has number 8 at the bottom?

Mr. CLARK. OK.

The CHAIRMAN. Let's do this again because I have had an opportunity to look at some more of the printed out documents that refer to that same bill. This one was written down by hand. R-E-S, now, I don't know whether it's "resolution" or not. It would really appear to be "research" because that's what it refers to in other documents; right?

Mr. CLARK. That's probably true, right.

The CHAIRMAN. You've seen that before, haven't you? RES, short for research in this kind of thing?

Mr. CLARK. Now that I can read it, yes, I think that is exactly what it is.

The CHAIRMAN. Let's go to "CG," right? "Utility," right?

Mr. CLARK. Yes.

The CHAIRMAN. Isn't it a fair and reasonable interpretation now, Castle Grande utility? Recognizing Castle Grande was popular? At the bottom it says, "Rose Law Firm—IDC work." Isn't that true?

Mr. CLARK. I think that probably says, "Research Castle Grande utility."

The CHAIRMAN. I just wanted to get that established.

Thank you. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

I was just interested in the sequence of questions you had with Mr. Kravitz during which he asked you whether you had any reason to doubt that you had done everything correctly, and I think your answer was that in your opinion, you were in agreement with any reports that indicated that the Rose Law Firm had not done anything wrong. Is that basically correct?

Mr. CLARK. I'm not sure. I mean, he asked me a specific question as far as based upon review of the billing records, did I see any indication that we participated in a fraud, and I said no.

Mr. CHERTOFF. And just so it's clear, if you were to acknowledge here publicly that the firm participated in a fraud, you would be inviting not only tremendous civil litigation but, in fact, perhaps, other kinds of investigations; right?

Mr. CLARK. But if I answered otherwise, I'd be inviting perjury.

Mr. CHERTOFF. Now, you in fact signed a tolling agreement with the RTC with respect to the firm's liability regarding the matters which are the subject of the Pillsbury Report we have been hearing about; right?

Mr. CLARK. Yes, sir, we did.

Mr. CHERTOFF. Tolling agreement means an extension of the statute of limitations; right?

Mr. CLARK. That's correct.

Mr. CHERTOFF. That means that as of this point, there was not—at the point the agreement was signed, there was not a determination by the RTC, or the FDIC which succeeded it, about whether they want to proceed against the firm; is that correct?

Mr. CLARK. It was my understanding that there had been such a determination, but the discovery of the option was new information, so they sought an extension so they could examine that documentation.

Mr. CHERTOFF. All right. So that new information which came to light as of December 29 caused the RTC, which became the FDIC, to decide that they were not prepared to make a final decision; is that right?

Mr. CLARK. That's my understanding, yes, sir.

Mr. CHERTOFF. And of course this agreement was actually signed several days before the billing records came to light; right?

Mr. CLARK. That's correct, yes.

Mr. CHERTOFF. So that as of December 31 when the Pillsbury Report came out with the language which Mr. Ben-Veniste read about innocent intent, they didn't have the records of the 12 telephone calls or the 14 telephone calls between Mrs. Clinton and Seth Ward, did they?

Mr. CLARK. I don't believe they had the billing records, no.

Mr. CHERTOFF. You didn't know about the 12, or 14, or 16 calls between Mrs. Clinton and Seth Ward; right?

Mr. CLARK. I have had no discussion with Mrs. Clinton, no.

Mr. CHERTOFF. So that was evidence that the Pillsbury people did not have when they closed the books on their investigation on December 31; correct?

Mr. CLARK. It is my understanding they did not have the option or billing records, that's correct, yes.

Mr. CHERTOFF. Now the option is a document that was prepared between Mr. Ward and the bank which was supposed to be an option that the bank took out to purchase a piece of property for \$400,000; right?

Mr. CLARK. I have read the options and I remember the \$400,000 purchase price, yes, sir.

Mr. CHERTOFF. And you understand there's a substantial question that has been raised about whether that option was a device to pay Mr. Ward commissions on the sham transaction and avoid regulators coming back and reclaiming those commissions when they took over the bank; right?

Mr. CLARK. The only reference I have seen to that, Mr. Chertoff, is in the Pillsbury Report and they mention something to that effect, yes.

Mr. CHERTOFF. So in terms of when the fraud began and ended, you would agree with me that the Pillsbury people themselves, as of the time they closed their report, had a substantial question in their mind about whether the option was part of promoting the original fraudulent transaction; right?

Mr. BEN-VENISTE. Not at all.

The CHAIRMAN. Just hold on.

Mr. CLARK. I don't know what was in their mind, but there was some reference in the report that there was some belief by some that possibly this was some way to convert ordinary income to capital gains or something to that effect. I recall reading that in the report, yes, sir.

Mr. CHERTOFF. Again, as of December 31 when the report was closed, so far as you know, and of course you've been asked a series of questions inviting you to comment on the Pillsbury Report by my friend, Mr. Ben-Veniste, so along that line, as far as you know on December 31, the Pillsbury people did not know that there had been extensive contacts between Mrs. Clinton and Mr. Ward in the latter part of 1985 and through the early part of 1986; correct?

Mr. CLARK. I don't know—I assume that they have given interrogatories to Mrs. Clinton. I don't know what her answers have been, so I really can't answer that, Mr. Chertoff. I don't know.

Mr. CHERTOFF. And isn't it your understanding that the interrogatories were sent out before or at the time the tolling agreement was signed?

Mr. CLARK. I just assume that she's been answering interrogatories all along. I have not seen any of them but—

Mr. CHERTOFF. The billing records also indicate, do they not, that Mrs. Clinton had a couple of meetings together—

The CHAIRMAN. Well, I think it's fair to tell Mr. Clark that the interrogatories basically indicate that Mrs. Clinton had no knowledge of Castle Grande. I think he ought to know that. And if you want to see it, we will give you a copy, but I think that is a fair summation.

Mr. CLARK. OK.

Mr. CHERTOFF. You were asked about the September 24th letter by Mr. Kravitz as to whether in your opinion the September 24th letter between Mr. McDougal and Mr. Ward appeared to be written by a lawyer; correct?

Mr. CLARK. Yes, correct.

Mr. CHERTOFF. There are two September 24th letters. Which one are you referring to?

Mr. CLARK. I don't have either one of them in front of me. Again, I think I saw them as attachments to the Pillsbury Report. They made some reference to legalese in one and one didn't have the legalese. Neither one of them looked like something I would draft.

Mr. CHERTOFF. Well, wasn't there evidence in the Pillsbury Report that the letter—one of the letters may have been typed by Mr. Hubbell's secretary?

Mr. CLARK. Yes.

Mr. CHERTOFF. Wasn't there also evidence in the Pillsbury Report that one of the letters may have been backdated?

Mr. CLARK. I don't recall, but I don't doubt your summary, no.

Mr. CHERTOFF. Wasn't, in fact, there a substantial question about whether a letter was backdated to make a transaction seem or an agreement seem as if it had occurred in September when in fact the document was prepared sometime thereafter?

Mr. CLARK. That may be. I read it on the plane on the way up here, but I trust you—

Mr. CHERTOFF. You've given answers about the September 24th letter not being written by a lawyer, and if you're going to commit yourself to opinions about the September 24th letter, let's make sure we have all—

Mr. CLARK. I have read both letters, and it definitely is my testimony they did not strike me as being the type of letters a lawyer—a competent lawyer would write to commit a transaction to paper.

Mr. CHERTOFF. Do you know how far Mr. Ward went in school?

Mr. CLARK. No, I have no idea.

Mr. CHERTOFF. Do you know whether he was—

Mr. CLARK. I take that back. I think somewhere in the report it says he dropped out of college or something.

Mr. CHERTOFF. Well, let me put up on the Elmo, we don't have a copy of it, but it's a September 24th letter, it's the second letter signed by Seth Ward and James McDougal which contains 3 pages. And I apologize we only have one copy, page 3, marked "Addendum to agreement between Seth Ward and James B. McDougal."

I want you to tell me whether you think that was written by a nonlawyer—competence is a different question, but whether it was written by a nonlawyer.

Mr. CLARK. I don't think this is what I'm seeing. Is this it?

Mr. CHERTOFF. This is the addendum to the letter of September 24, legal description.

Mr. CLARK. That looks like a typed legal description.

Mr. CHERTOFF. Now did you also note, and again this goes back to the question you were asked about whether the fraud ended in September. Did you also know that on February 28, 1986, the day the examiners came into Madison Guaranty Savings & Loan, there were a series of transactions that closed at the bank that were de-

signed to clear off the books of the bank, a large number of loans or transactions relating to Castle Grande.

Mr. CLARK. No, sir. I was not aware of that.

Mr. CHERTOFF. Did you know that Hillary Clinton had a conversation of almost an hour with Mr. Ward on that day?

Mr. CLARK. If it's in the billing records I guess I should know it, but I don't recall every specific entry.

Senator SARBANES. Could I ask what was put up on the Elmo?

Mr. CHERTOFF. Page 3 of a document, Bates number SINTR 37, 38, and 39. It's page 39 that went up.

Senator SARBANES. Is that just a standard property description? That's what it looked like to me to be.

Mr. CHERTOFF. It appears to be a description of this piece of property, a legal description of the piece of property but not something from a form book, something that's tailored to the particular piece of property.

Senator SARBANES. But I mean, that's a standard real estate description, legal description of a piece of property?

Mr. CHERTOFF. That's correct.

Senator SARBANES. Is the assertion then that the agreement was written by lawyers because of this addendum?

Mr. CHERTOFF. Actually, Mr. Clark had indicated he thought it looked like it was something that was I guess lawyerly, but I'll go to the first page of the document. I'll quote from the Pillsbury Report, at page 67, "The letter and particularly the real property description attached to it appear to be the work of a lawyer. The language is marked by legalese, 'thereon,' 'commonly referred to as,' 'the aforementioned property,' 'the pro rata amount of the note,' 'the property or any portion thereof.' Ward is not a lawyer. He dropped out of Arkansas State Teacher College in 1941 to join the Marines and by his own admission, 'I don't like the fine print and I don't normally study what I'm signing carefully enough.'" Do you disagree with the opinion of the Pillsbury Report with respect to this issue whether a lawyer wrote this letter?

Mr. CLARK. No, I was looking more at footnote 281, which said, "One would expect greater clarity from a lawyer of Webster Hubbell's ability." I mean, is this the one that refers to the, "You will drive a luxury automobile"? That's what struck me as being not very lawyerlike. And I don't have it in front of me.

Mr. CHERTOFF. I guess it depends on the lawyer.

Mr. CLARK. Well, that's true.

Mr. CHERTOFF. But do you disagree with me that this letter—forget me. Do you disagree with Pillsbury Madison and this report that keeps being mentioned that this letter, in fact, is appearing to be the work of a lawyer?

Mr. CLARK. Yes.

Mr. CHERTOFF. You disagree with that?

Mr. CLARK. I mean—I do not have the letter in front of me. I've been hearing about it—

The CHAIRMAN. Why don't we put the letter in front of him. I think this is much ado about nothing because I can't understand how you would really think that a fraud starts on one day and necessarily ends on another.

Mr. CLARK. I didn't say that, Senator.

The CHAIRMAN. Well, I mean, the testimony that has been almost suggested is that the fraud started on September 4 or 3 and that thereafter there would be no fraud. I mean, that's absurd. You don't need me to make that observation.

Mr. CLARK. Mr. Chertoff, this was not the letter——

The CHAIRMAN. He's asking you about this particular letter.

Mr. CLARK. Right. That's not the letter that I was referring to.

The CHAIRMAN. You were referring obviously to another letter, Mr. Clark.

Mr. CLARK. To the one that had the luxury automobile.

The CHAIRMAN. What about this letter?

Mr. CHERTOFF. Mr. Clark, what——

Mr. CLARK. I would agree with you, on this letter especially when you get to the "acknowledged and accepted by," which is something a lawyer might put on there, and some of—this is certainly much more likely to be drafted by a lawyer. I apologize. There was some memo or something that was drafted which referred to a luxury—that's what I thought we were talking about.

The CHAIRMAN. OK.

Mr. CHERTOFF. Now of course, with respect to the issue of the backdating of the letter, you don't know and, in fact, it's your understanding that Pillsbury wasn't able to determine when the letter was actually prepared; right?

Mr. CLARK. That's my understanding, but I think this is the first time I have seen this particular letter.

Mr. CHERTOFF. The reason I raise this, Mr. Clark, is that you were running along with a lot of agreement with questions that were asked previously that appeared to be exculpatory, and I wanted to determine exactly what your basis of knowledge was.

Mr. CLARK. Again, I was referring—there are a couple of memorandums. We're discussing when the transaction was structured, and as far as—we had done work in August and started back in September. I don't have these documents. My recollection is there are a couple of memorandums, internal memorandums between Mr. Ward and Mr. McDougal, setting forth how the matter was to be structured. That's what I was referring to in my mind at the time I was answering those questions, not these letters.

Mr. CHERTOFF. You were also asked a question about whether you see anything nefarious in the activities of any of the lawyers at the Rose Firm in connection with these transactions. You will agree with me that you do not have actual knowledge of what happened, the events surrounding the preparation or the execution of the option; correct?

Mr. CLARK. That's correct, yes.

Mr. CHERTOFF. You do not know what the conversations were between Mrs. Clinton and Seth Ward in November and December of 1985; correct?

Mr. CLARK. Absolutely not.

Mr. CHERTOFF. You do not know what the conversation was on February 28, 1986, between Mrs. Clinton and Seth Ward; correct?

Mr. CLARK. I don't know the subject of any of Mrs. Clinton's conversations.

Mr. CHERTOFF. Mrs. Clinton was a litigator at the firm; right?

Mr. CLARK. That's correct.

Mr. CHERTOFF. Do you have any reason or do you know why it was she would have been taking on the burden of preparing the option for Mr. Ward on May 1?

Mr. CLARK. It was not unusual for our litigators to occasionally do transactional work, so I can't speculate as to why she——

Mr. CHERTOFF. It would be purely speculative?

Mr. CLARK. Yes.

Mr. CHERTOFF. Finally, let me ask you this. When did you become aware that Mrs. Clinton was a partner with Mr. McDougal in a business venture called Whitewater?

Mr. CLARK. It would have probably been in the spring of 1992 when the article came out, or some articles.

Mr. CHERTOFF. You've been asked to come here to represent the Rose Law Firm as the managing partner, right?

Mr. CLARK. I think that's correct, yes.

Mr. CHERTOFF. So to the best of your knowledge, speaking for the firm, and let's put Mr. Hubbell and Mr. Foster to one side. Excluding them, is it your testimony that—to the best of your knowledge, the firm was unaware or not made aware by Mrs. Clinton of her separate business relationship with Mr. McDougal until it came up in 1992?

Mr. CLARK. I think that's probably true, that the majority of the people would not have been aware of that.

Mr. CHERTOFF. In 1988, Mr. Foster circulated a memorandum regarding potential conflicts to lawyers in the firm in connection with the possibility of representing the Federal Government as a receiver for a number of banks, including Madison Guaranty Savings & Loan. Did you know that?

Mr. CLARK. Yes, I recall that.

Mr. CHERTOFF. It is the required practice, is it not, of your firm, as in every other firm, to run a conflicts check to make sure there is no legal conflict or business conflict in taking on work; correct?

Mr. CLARK. That's correct.

Mr. CHERTOFF. The work that was being considered here was a receivership; right?

Mr. CLARK. It was 1988.

Mr. CHERTOFF. Right, to represent the Government in its actions as a receiver on these banks; right?

Mr. CLARK. Yes.

Mr. CHERTOFF. A receiver is, in the case of these Government agencies, they essentially take over the bank, and one of their responsibilities would be to hire lawyers to sue people who had previously run the bank who had committed misconduct; right?

Mr. CLARK. That's correct.

Mr. CHERTOFF. So the work that was being considered in the memorandum of November 1, 1988, would have been, among other things, representing the receiver, the Federal Government, in pursuing possible claims against the officers who had been operating Madison Guaranty before it got taken over; right?

Mr. CLARK. I would need to see that, Mr. Chertoff. I don't think we were being considered for the what I would call the D&O work. I think that was with—my guess is it is with respect to the Frost litigation. I don't recall us ever being considered for the standard D&O investigation.

Mr. CHERTOFF. Let me read it to you. This is the second paragraph. It's RS 749. "It is presently anticipated that these receiverships would be pass-through receivership rather than liquidating receiverships. In a pass-through receivership, the receiver sells the assets as a package. The responsibility of fee counsel"—that would be your firm, right, if this panned out?

Mr. CLARK. In this case, yes.

Mr. CHERTOFF. "would be to institute document procedures at the time of the takeover, defend any challenge to the receivership and institute 90-day snapshot investigation of officers, directors, attorneys, accountants, and appraisers to recommend whether the receiver should assert a claim." Right?

Mr. CLARK. Correct.

Mr. CHERTOFF. So this conflict memo was contemplating the possibility that the firm would be hired to represent the receiver in perhaps among other things conducting a snapshot investigation of officers and directors of Madison Guaranty Savings & Loan; right?

Mr. CLARK. Is Madison on the list?

Mr. CHERTOFF. Madison Guaranty Savings & Loan is number 6.

Mr. CLARK. Yes, then that's true.

Mr. CHERTOFF. There is therefore, not surprisingly, a list of potential conflicts for each of the institutions, and with respect to Madison Guaranty, there are a list of directors and officers, which includes such persons as James McDougal and Susan McDougal. Now would you agree with me that it was Mrs. Clinton's obligation as a lawyer in the firm in responding to this conflicts check to identify to the firm that she had a business relationship outside the firm with Mr. McDougal and Mrs. McDougal?

Mr. CLARK. If their names are on that list, it was circulated to the firm, then yes, I would think so.

Mr. CHERTOFF. Did they do that?

Mr. CLARK. I assume that somewhere we have—I certainly don't recall knowing it, whether Vince—whether there was some response to Vince, and he docketed it somewhere, I don't know. I do not know, and as far as I know, the majority of the firm did not know until February 1992.

Mr. CHERTOFF. We have the records that your firm produced of responses. There is a scarcity of responses, but there's certainly no response—

Mr. CLARK. Then I would assume there was no response.

Mr. CHERTOFF. From Mrs. Clinton?

Mr. CLARK. That's correct.

Mr. CHERTOFF. But this is very important. There's no question in your mind that she was under an ethical obligation at least as of the date of this memo to disclose to the law firm the fact that she had a separate business relationship with James McDougal and Susan McDougal; correct?

Mr. CLARK. I think that's correct. I will have to say, the only clarifying point is it was not a typical—when we were sort of bidding in a group like this, we would run a preliminary search. We did one of those quite often, and, you know, we would do a preliminary search of the computer system, nothing showed up. Once it really got serious, are they actually considering it, to hire us for this institution, then there would be another more detailed list. But

yes, I think, in fairness it would have been proper to disclose it at that point.

Mr. CHERTOFF. It would have been inappropriate and improper not to disclose it; right?

Mr. CLARK. Certainly as we got closer and were actually going to be engaged, yes, but it should have been disclosed then, no question about it.

Mr. CHERTOFF. Because you guys were partners and part of what partners were supposed to do is they are supposed to be honest with each other?

Mr. CLARK. I hope that's what the basis of it is.

Mr. CHERTOFF. Thank you, Mr. Clark.

Mr. BEN-VENISTE. Mr. Clark, let me ask you whether a lawsuit on the basis of this representation was ever instituted against Mr. McDougal.

Mr. CLARK. I'm not sure I understand your question.

Mr. BEN-VENISTE. Did the Rose Law Firm in bidding for this business get the business?

Mr. CLARK. To my knowledge, the only thing we were ever engaged for as far as receiver was in the Frost litigation.

Mr. BEN-VENISTE. And the Frost litigation was a third party litigation against the accounting firm of the bank?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. Do you happen to know whether in 1986 or 1987 Mr. McDougal had any money? Do you have any reason to believe he did?

Mr. CLARK. I don't know one way or the other.

Mr. BEN-VENISTE. The whole idea being retained here was to see whether money could be obtained by way of lawsuit or compromise, threat of lawsuit from persons who had either acted fraudulently or negligently to the damage of the bank?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. In that regard, the firm was hired to institute a case against the accounting firm for whatever negligence or worse had already been discovered?

Mr. CLARK. The action had already been implemented, so we were substitute counsel.

Mr. BEN-VENISTE. You were substitute.

Mr. CLARK. Correct.

Mr. BEN-VENISTE. Was there any conceivable conflict that you saw, that you would see now between suing the accounting firm for the Madison Bank and Mrs. Clinton having been involved in a private business deal with the former CEO of the bank?

Mr. CLARK. No, sir, it wouldn't be a conflict.

Mr. BEN-VENISTE. Do you know whether Mrs. Clinton ever received the detailed questionnaire to fill out about the matters that Mr. Chertoff has brought up?

Mr. CLARK. I would assume that she received everything that everyone else received, so to the extent that was circulated to everyone, she would have received that, I would have thought.

Mr. BEN-VENISTE. Do you have a copy of that?

Mr. CHERTOFF. We're making copies.

Mr. CLARK. I probably have seen one, but I don't have one now.

Mr. BEN-VENISTE. Apparently we are going to have a copy made so we will be able to deal with that question on the basis of more than speculation.

Let's come back to the Pillsbury Report. The matter that was referred to—even before we get to the Pillsbury Report, the matter that the Chairman showed you, which was a page from a detailed billing—I'm sorry, which was a page from a report that reflects both the initials CG and then underneath that a description, "Rose Law Firm, IDC matter"; correct?

Mr. CLARK. That's correct, yes, sir.

Mr. BEN-VENISTE. Now let me refer to the official record of an interview, Office of Investigations, Office of Inspector General involving Mrs. Clinton, and this interview was conducted on November 10, 1994. Let me read from the bottom of the third page of that 5-page document. "Mrs. Clinton was shown a January 23, 1986 memo from Rick Donovan regarding Madison Guaranty versus IDC. She recalled the issue pertained to researching townships and the topic of 'wet/dry' licensing approval for alcohol consumption. She stated that this matter was handled by Rick Donovan." Is that the very same regulatory matter that we have been discussing, the wet/dry matter?

Mr. CLARK. I believe so, yes.

Mr. BEN-VENISTE. Here it is described as an IDC matter, in this interview, so the issue of whether something that has the acronym "CG" 11 years ago, which is also referred to as IDC, has some nefarious implication to it, I put to you again, is there any reason to suspect that Mrs. Clinton wasn't being candid when she referred to her involvement as involvement with the IDC matter?

Mr. CLARK. No, sir, not that I know of.

Mr. BEN-VENISTE. In terms of the Rose Law Firm's investigation by the Pillsbury Madison & Sutro firm as regards the representation by Rose of Madison Guaranty Savings & Loan, on the issue of whether this billing information casts substantial new evidence upon the table to consider, I will refer again to page 77, where it says, "the only solid evidence tying the Rose Law Firm to the acquisition is evidence of the innocent activity of participating in the drafting of the purchase agreement. While some evidence suggests that Hubbell could have had a role in drafting the September 24, 1985 letter between McDougal and Ward, nothing proves he did, much less that he did so knowing it to be wrong." This refers to what you have been shown as the backdated version of the rather inartful earlier version of that letter. Is that fair to say?

Mr. CLARK. Again, I think that's fair to say. I was referring to the different documents on the first round of questioning, but—

Mr. BEN-VENISTE. Most importantly, the Pillsbury firm is making the assumption, because they had records from the Rose Law Firm that indicated that Mrs. Clinton had some role in drafting the option agreement, that was the computer-generated draft that reflects that it was prepared by someone associated with Mrs. Clinton at that time; correct?

Mr. CLARK. Yes. I think they did have the option, and they knew it was prepared by the Rose Firm.

Mr. BEN-VENISTE. So they made the assumption, and now we have a grand total of 2 hours spent on the drafting of this docu-

ment and other matters, comprising 2 hours of time, but most important, the conclusion of the Pillsbury firm was, "Similarly, while Mrs. Clinton seems to have had some role in drafting the May 1, 1986 option, nothing proves that she did so knowing it to be wrong, and the theories that tie this option to wrongdoing or to the straw man arrangements," that's referring to the initial contract, "are strained at best." Is that what you were referring to earlier?

Mr. CLARK. Yes, sir.

Mr. BEN-VENISTE. In terms of the conclusion with which you do not take issue?

Mr. CLARK. Yes, sir.

Mr. BEN-VENISTE. We would cede back our time.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Mr. Clark, does the Rose Law Firm have policies for handling client files?

Mr. CLARK. We do.

Mr. GIUFFRA. Is it the normal case that the client files belong to the client?

Mr. CLARK. Yes.

Mr. GIUFFRA. And that an attorney who was leaving the law firm could not take the client files with him or herself?

Mr. CLARK. Without the consent of the client, that's correct.

Mr. GIUFFRA. Do you have any procedures in place for handling client files when an attorney is leaving the law firm?

Mr. CLARK. We do. I mean, obviously it depends on the purpose or where the attorney is going. In a standard situation where an attorney is leaving to practice in another firm or something, then it is not unusual for them to take clients with them. If that's the case, we will sit down with the attorney, take a list of the files, we will determine what's to be left at the firm.

If there are any that they think will be taken with them, we will agree on the standard form of a letter to be sent to the client consenting to the release of those files, and once we receive the letters back, we will release the files to the attorney who has left.

Mr. GIUFFRA. When Mr. Foster, Mr. Hubbell, and Mrs. Clinton left the Rose Law Firm in the latter part of 1992 and early 1993, you met with them to discuss the pending matters that they had at the firm?

Mr. CLARK. I did not meet with them. It's my understanding that members of their section, which would be the likely recipient of any active files, met with them to discuss who was to handle those files. It was not necessary in my mind, or in Mr. Kennedy's mind I think, at that time to meet with them to discuss filings because we didn't anticipate there would be any reason for them to take the client files with them.

Mr. GIUFFRA. You assumed the client files would remain at the law firm?

Mr. CLARK. That's right.

Mr. GIUFFRA. No one disclosed to you that files would be leaving the law firm?

Mr. CLARK. That's correct.

Mr. GIUFFRA. This is a letter, you may recall, that Mr. Jones received. He is a partner of yours at the firm?

Mr. CLARK. Yes, he is.

Mr. GIUFFRA. You and he had been working on these Madison/Whitewater related matters?

Mr. CLARK. Actually, no. I think the reason Jerry was the recipient of this letter, he had been working with me on the Hubbell matter.

Mr. GIUFFRA. And so David Kendall knew him and sent him this letter?

Mr. CLARK. I don't think David knew him. I think David must have gotten his name from somebody else.

Mr. GIUFFRA. Do you know where he got the name?

Mr. CLARK. I don't.

Mr. GIUFFRA. The letter says, "Dear Jerry: It was good to talk to you today. I am enclosing herewith three file folders, labeled: A3530.1 Madison Guaranty Ltd. Ptnrshp. Application/Brokerage Activities; A3530.2 Madison Guaranty—Net Worth—1985 Preferred Stock Offering; and A3530.3 Madison Guaranty Preferred Stock Offering Corporate, which were among the late Vincent Foster's files." Now these were Rose Law Firm's client files; correct?

Mr. CLARK. Yes.

Mr. GIUFFRA. Was this the first time that you were aware that Rose Law Firm's client files had been removed from the firm?

Mr. CLARK. Yes, it was.

Mr. GIUFFRA. And were you, in fact, very upset when you learned that these files had been removed from the firm?

Mr. CLARK. I was.

Mr. GIUFFRA. At this point in time, the Madison files belonged to the RTC, which had taken over Madison; is that right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Do you know anything about how these files were removed from the firm?

Mr. CLARK. No, I do not.

Mr. GIUFFRA. Do you know why Mr. Kendall wrote that these files were among the late Vince Foster's files?

Mr. CLARK. No, I do not.

Mr. GIUFFRA. It was improper for Mr. Foster to have removed these files?

Mr. CLARK. No.

Mr. GIUFFRA. It would have been improper for him to take them out of the firm?

Mr. CLARK. Unless he had the client's consent, and I know that he didn't.

Mr. GIUFFRA. Would it have been proper if Mr. Hubbell was involved in doing this?

Mr. CLARK. No.

Mr. GIUFFRA. Isn't it the case that you learned sometime in the last several years that Mr. Hubbell removed some of Mrs. Clinton's time records from the Rose Law Firm?

Mr. CLARK. I have learned that Mr. Hubbell had possession. I don't know who removed them.

Mr. GIUFFRA. Could you tell the Committee what you know about the fact that Mr. Hubbell has possession of Mrs. Clinton's time records?

Mr. CLARK. Well, I can't—I learned it through our counsel. We've been obviously searching for documents for years now, and they, their primary efforts have been searching for some, and at some point they were told that Mr. Hubbell or at that point Mr. Hubbell's attorney was in possession of some timesheets. We obviously were very interested in that. The Independent Counsel was informed immediately of that.

One of our counsel went over and examined those to see what information was contained. It was my understanding they were mostly 1987, 1988, and possibly a few 1989 timesheets. They were reviewed to determine whether they had anything to do with any matters that we were under subpoena about, and to the extent they were, our privileged information was redacted and they were turned over.

Mr. GIUFFRA. Was it consistent with firm policy for Mr. Hubbell to have removed or, at least, have in his possession Mrs. Clinton's time records?

Mr. CLARK. I can't really say we had—I mean, we've never considered our handwritten time records?

Mr. GIUFFRA. These were handwritten time records?

Mr. CLARK. It's my understanding that there were some handwritten and some typed. I don't know what was what, but I'll have to say, I can't really say that we have a policy saying that the records you keep at your desk are firm records.

Mr. GIUFFRA. Did you also learn that Mr. Hubbell had removed a Bank of Kingston client file from the Rose Law Firm?

Mr. CLARK. Well, again, we had learned that he had it given to his attorney and it had been produced to Bank of Kingston. I don't know who removed it.

Mr. GIUFFRA. And the Bank of Kingston was owned by Jim McDougal; is that right?

Mr. CLARK. I believe he partially owned it, yes.

Mr. GIUFFRA. He was the Clinton's Whitewater business partner and also the owner of the Madison Guaranty Savings & Loan?

Mr. CLARK. That is true.

Mr. GIUFFRA. You don't know why Mr. Hubbell's attorney had possession of this Bank of Kingston file?

Mr. CLARK. I do not.

Mr. GIUFFRA. You don't know how the Bank of Kingston file left the Rose Law Firm?

Mr. CLARK. I absolutely do not.

Mr. GIUFFRA. It was improper for the file to have left the Rose Law Firm?

Mr. CLARK. That's true.

Mr. GIUFFRA. Did the firm have a policy in any way limiting Mrs. Clinton's ability to represent private clients before Arkansas State agencies?

Mr. CLARK. No.

Mr. GIUFFRA. So she was free to represent and lobby Arkansas State officials while she was a partner at the Rose Law Firm on behalf of private clients?

Mr. CLARK. As long—she was subject to the same rules as everyone else.

Mr. GIUFFRA. Don't the billing records, in fact, indicate that Mrs. Clinton contacted Beverly Bassett, who was the Arkansas Securities Commissioner?

Mr. CLARK. I believe they do, yes.

Mr. GIUFFRA. Now if we could put on document number 11, which is an April 30, 1985 letter to Charles Handley. Mr. Handley was with the Arkansas Securities Department, and this letter was written April 30, 1985, and the re: "Authorization and Issuance of a class of Preferred Stock by Madison Guaranty, a Savings and Loan Chartered under the laws of the State of Arkansas."

In the section of the letter which has been highlighted, it says, "The question has arisen as to whether an Arkansas Chartered Savings and Loan Association may under Arkansas law create, authorize, and issue a class of preferred stock. For the reasons stated below, we are of the opinion that a State chartered savings and loan may do so."

If we could turn to the next page of the document, and if we could just shrink it on the Elmo a bit—the other way, a little bit further. The letter is signed, "Rose Law Firm." It's not signed by a partner or an associate of the firm; correct?

Mr. CLARK. That's correct.

Mr. GIUFFRA. So this would be a formal opinion letter of the Rose Law Firm?

Mr. CLARK. It was an opinion letter. I'm not sure what formal—generally I see an opinion letter as being something you would give to your client, but it's an opinion letter, yes.

Mr. GIUFFRA. Did the Rose Law Firm have policies with regard to the signing of opinion letters in the firm's name?

Mr. CLARK. Yes. Generally an opinion letter, given in a transaction, would require at least the approval of a partner.

Mr. GIUFFRA. This opinion letter indicates that if the recipient from the Arkansas Securities Department has any questions, they should advise either Mrs. Clinton or Mr. Massey of your firm; is that correct?

Mr. CLARK. Yes, it does.

Mr. GIUFFRA. The letter also has a cc to Beverly Bassett, who is the Arkansas Securities Commissioner?

Mr. CLARK. Was at that time, yes.

Mr. GIUFFRA. Don't the billing records that we have obtained from Mr. Kendall that were at the White House indicate that on April 29, 1985, Mrs. Clinton had, in fact, spoken to Mrs. Schaffer about this preferred stock issue?

Mr. CLARK. I believe they do, yes.

Mr. GIUFFRA. So the opinion letter was sent the next day?

Mr. CLARK. Yes.

Mr. GIUFFRA. Now am I correct, sir, that in February 1994, you investigated some allegations of shredding at the Rose Law Firm?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Were you not advised by a courier at the firm—I believe it was a man by the name of Jeremy Hedges; is that right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. That he had recently, sometime in either January or February 1994, shredded some documents that were from the files, from files that bore Vince Foster's initials?

Mr. CLARK. The box that contained the documents had Vince's initials on it, yes.

Mr. GIUFFRA. What was your understanding as to when the shredding had occurred?

Mr. CLARK. It was late January.

Mr. GIUFFRA. Late January 1994?

Mr. CLARK. Of 1994, correct.

Mr. GIUFFRA. You did an investigation into the shredding incident?

Mr. CLARK. We did.

Mr. GIUFFRA. And it's your belief that there weren't any Madison or Whitewater files in the box; is that right?

Mr. CLARK. Absolutely, yes.

Mr. GIUFFRA. But you can't be certain as to whether there were any Whitewater or Madison files in the box?

Mr. CLARK. I'm as certain as I can be, yes.

Mr. GIUFFRA. But you can't be completely certain?

Mr. CLARK. No.

Mr. GIUFFRA. Do you know why Mr. Hedges shredded this box of documents that were from Mr. Foster's files?

Mr. CLARK. The box contained Vince's initials; in fact, they came from another attorney's files.

Mr. GIUFFRA. So you believe that the files were not Mr. Foster's files?

Mr. CLARK. I'm pretty sure I know that as a fact, yes.

Mr. GIUFFRA. Mr. Clark, if two Rose lawyers have a meeting, normally would the client be billed for the time of both lawyers?

Mr. CLARK. It depends on the meeting. I mean—

Mr. GIUFFRA. For example, if you and another lawyer spoke to a client for a half hour, you both would be expected in your time records to record a half hour for speaking to each other about the matter; correct?

Mr. CLARK. I would say if we were in a conference with the client, speaking, you know, in an hour, yeah, certainly we would hope that they would both record it. They don't always do it. We would hope that they would both record it.

Mr. GIUFFRA. You would expect them to do it, though?

Mr. CLARK. We would be underbilling if we didn't.

Mr. GIUFFRA. We've done some analysis of the Rose Law Firm billings that we obtained from Mr. Kendall, and they indicate that there are 22 instances in which Mrs. Clinton billed for a conference with another Rose lawyer and the other Rose lawyer does not have the similar conference, for example, with Mrs. Clinton. Do you have any explanation for why that would be?

Mr. CLARK. It doesn't surprise me. Mrs. Clinton was a very meticulous biller. Some of our other attorneys—unfortunately, I'm one of them—are not particularly—are not that specific. And so it's not unusual, and we have a lot of trouble in going through billing records to see where, you know, conference with somebody, that someone else hasn't entered an entry. In fact, one or two of our attorneys, that's how they keep most of their time, is to go through a billing memo and say, yes, I was at that meeting and recall that. It's not that unusual.

Mr. GIUFFRA. So Mrs. Clinton had billed an hour for a conference with Mr. Massey, and Mr. Massey did not bill the time. In fact, the amount of time that the Rose Law Firm had worked on Madison matters should be increased by another hour; right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. So, in fact, the 60-hour number is probably on the low side given the fact that we have identified 22 instances in which the other lawyer who was having the conference or the teleconference with Mrs. Clinton did not bill the time?

Mr. CLARK. Well, except it's my understanding that 60 hours is Mrs. Clinton's time, so I don't think her time would have been understated, but the firm's time would have been understated.

Mr. GIUFFRA. In fact, the firm did more work for Madison than in fact we realize now?

Mr. CLARK. That could be the case, yes.

Mr. GIUFFRA. That would be your best explanation for this discrepancy?

Mr. CLARK. Yes.

Mr. GIUFFRA. Thank you, sir.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Clark, I want to be sure I understand something. There was a big to-do at one point that the Rose Law Firm or someone working in the Rose Law Firm was shredding files of Vince Foster's. That was in 1994, I think.

Mr. CLARK. That's correct.

Senator SARBANES. Do you recall that, it was carried on the television and run in the newspapers and everything else?

Mr. CLARK. I'll never forget it, Senator. Right.

Senator SARBANES. Now as I understand what you said earlier in responding to Mr. Giuffra, there was a box that had Foster's initials on it out of which these papers that were shredded came, but the papers had nothing to do with Foster, or the files had nothing to do with Foster; is that correct?

Mr. CLARK. They had nothing to do with Whitewater or Madison. I mean, these files apparently came from one of our attorneys when he was moving offices, and in fact we still have the file jackets that the documents that were in those—we have produced those to the Committee.

So certainly Vince's name was in those documents. They were internal Rose Firm financial records, that sort of thing, so they did have something to do with Vince but they didn't have anything to do with Whitewater or Madison.

Senator SARBANES. But that was the allegation that was made against the firm and given widespread media circulation, was it not?

Mr. CLARK. That's correct. Yes, sir, it was.

Senator SARBANES. Then upon your investigation, when you actually got the facts, the facts in effect established that this prior judgment that had been made was invalid?

Mr. CLARK. That's correct. I could speak all day about this issue, Senator.

Senator SARBANES. Is there anything further we ought to know about it? I think it's an important point to get on the public record, because the Rose Law Firm took a beating there for a bit by media

judgment about this matter, which said that Whitewater and Madison files were being shredded by the Rose Law Firm, and I take it that upon your investigation and inquiry, you have established that was not the case?

Mr. CLARK. We have established—and this gets back to something I said earlier, I mean, with respect to what Whitewater files that we may have had, I think there's been testimony here that those were in some way returned to the campaign in 1992.

With respect to our Madison files, they have now been accounted for. We know where Mr. Massey's files are, we've produced documents showing Mrs. Clinton's files were destroyed in 1988. We have records of our other files, Mr. Rule's files, a few other files actually being returned to the client, so we don't see where anything is missing at this point, especially now that the billing records have been determined.

So if there was something that was destroyed, I don't know what it was, and we've concluded, based upon a very thorough investigation, and I will say the Independent Counsel certainly investigated this thoroughly, that there was no relevant documents destroyed.

Senator SARBANES. Did this courier who destroyed these documents, did he ever see any Whitewater documents? Did you interview him or talk with him?

Mr. CLARK. I was very cautious about that, Senator. When the allegations—I mean, I first learned about these allegations when a Washington radio station called me at 5:30 in the morning when I was at home, and I immediately went down to the firm that morning, I met with the entire staff. I met with the couriers separately. I met with the lawyers.

I told them that if anyone had any information whatsoever about the destruction of documents, they should let us know immediately. If they were in any way uncomfortable talking to me, they should talk to someone else in the firm if they were uncomfortable about it, that they would be asked questions soon from investigators and they should tell the truth and not do in any way—take any steps to protect the firm, and I think any of the couriers or staff members that I talked to will back me up on that.

Mr. BEN-VENISTE. In fact, more than that, you saved the file folders because those weren't shredded, the Manila file folders?

Mr. CLARK. That's right. We learned during the course of the investigation that this box that was destroyed apparently had come down from a particular file clerk. We asked her where she got the box. It was when one of my partners was moving. And just—I mean, it was by accident that he still had the junk, I'll call it, still in the corner of his office. He had the empty file folders thinking he might use them again.

Mr. BEN-VENISTE. So they were there to be recycled essentially?

Mr. CLARK. Correct.

Mr. BEN-VENISTE. You could tell from looking at the files what they were. So if I understand it, it was just the fact that on the outside of the box Mr. Foster's initials appeared on it and this box had been recycled after he had left the firm?

Mr. CLARK. That's right. We reuse those constantly.

Mr. BEN-VENISTE. So all of this to-do was put to rest for all purposes except the press, which in one form or another still carries the notion that files were shredded by the Rose Law Firm——

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. —that had something to do with Whitewater?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. But you can testify that that's absolutely not the case?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. Now to go to Mr. Massey's documents on a point that you just made, you've now accounted for all of Mr. Massey's documents that he worked on in his representation of Madison?

Mr. CLARK. Correct. Again, Rick had retained copies. I think he had already testified to that. And when we received the files back from Mr. Kendall before we returned the originals over to the Independent Counsel, Rick went through those files to make sure that they were a complete set.

Mr. BEN-VENISTE. According to Mr. Massey's testimony, he retained the originals of his files, made copies in 1992 at the request of Mr. Foster when Mr. Foster had need for them in the campaign, that he compared the files which Mr. Kendall sent to the Rose Law Firm to those which he had maintained all along, and that they were identical?

Mr. CLARK. That's correct. I'm not sure Rick recalled whether he kept or gave Vince originals or copies, but——

Mr. BEN-VENISTE. He indicated in his testimony here that he kept the originals.

Mr. CLARK. OK.

Mr. BEN-VENISTE. I think we have located—do we have another copy of this? We have located—and I'll put up on our machine to see if you can read it—I think the earlier memo that you were referring to of September 1985. It's a one-page memo between Mr. Ward and Mr. McDougal.

Mr. CLARK. I don't see it.

Mr. BEN-VENISTE. That is marked R 401, on the bottom it has 3668. It also has 009, and it has 5 in another place, and Exhibit A. It looks like one of those suitcases that's been to a hundred countries.

Mr. CLARK. OK. I see it now, yes. Yes, this is the memo I was referring to in answering Mr. Kravitz's questions earlier.

Mr. BEN-VENISTE. That is the one that is clear to you was not drafted as a contract by any person who had any legal training?

Mr. CLARK. That would be my opinion, yes.

Mr. BEN-VENISTE. That is the one that in paragraph 4 where it says, "Madison will provide you with a letter requiring that you drive a prestigious automobile while you are in charge of the project."?

Mr. CLARK. Correct. That's what I was referring to, yes.

Mr. BEN-VENISTE. Nothing further.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Clark, I have just one or two very, very general and brief questions.

Mr. CLARK. Yes, sir.

Senator FAIRCLOTH. The Pillsbury Madison Report is public, and in that report, there is a mention that the RTC sought an extension of the statute of limitation regarding the Castle Grande transaction. Is your firm conducting a review of the billing records to determine her involvement in the Castle Grande transaction, since they have asked for the extension?

Mr. CLARK. Well, sir, I have certainly reviewed them in anticipation of this testimony, but that's—

Senator FAIRCLOTH. So you have reviewed them?

Mr. CLARK. Yes, sir, I have.

Senator FAIRCLOTH. What did you find, in a word?

Mr. CLARK. I read the time entries. There were numerous telephone conferences with Mr. Ward, there was a telephone conference with Mr. Ward concerning option, and a time entry that says, "prepare option."

Senator FAIRCLOTH. So she was involved with the Castle Grande?

Mr. CLARK. It looks like she prepared that option, yes.

Senator FAIRCLOTH. OK. You know, she had mentioned that she was not involved with the Castle Grande at all, and that's why I wanted to know.

Mr. Clark, this morning Ms. Huber had testimony that billing records from the firm were removed, they asked her for them but when she went for them, they were gone, and then she saw them down at campaign headquarters and she said that seven or eight, a large group of campaign workers whose names she did not know, were just going through them. Does it bother you that billing records from your office were somewhat open property in a campaign headquarters?

Mr. CLARK. It is my understanding, Senator, that Ms. Huber's testimony—because I've heard this story before from other people—was that those were personal Clinton financial records concerning their Whitewater investment, not Rose Firm billing records.

Now had there been, would I have been upset, yes, but I don't believe that's what they were reviewing at that time.

The CHAIRMAN. If I might, and I ask the Senator, just make a point. I'm not sure, but I believe there was also testimony from that former young associate who is now a partner, Mr. Massey, that at or about the same time, he got a call from Mr. Foster. Actually, I'm going to withdraw that, because I'm not quite sure. I'm going to talk to Counsel, but I think there was another person who testified here that he had taken out documents and that somehow—and he wasn't aware, just like Ms. Huber—

Mr. CLARK. I think it was Mr. Kennedy.

Senator SARBANES. Mr. Chairman, that was Mr. Kennedy who was called to provide the Whitewater files that belonged to Mrs. Clinton. She was actually the client for those particular files, and those went down, and in fact Ms. Huber I think corroborated that here today, and then also from Ms. Huber they got the Clintons' personal financial papers.

The CHAIRMAN. I am confusing that with the testimony of Mr. Massey, who referred to the fact that Mr. Foster came to him right about the same period of time.

Mr. CLARK. About the same time, yes.

The CHAIRMAN. About the same time. Mr. Foster seemed to press Mr. Massey because he was annoyed that Mr. Massey did not have the files ready for him.

Mr. CLARK. Correct.

The CHAIRMAN. Mr. Foster came back, I think, the following day and retrieved the files from Mr. Massey. Then Mr. Massey testified he was upset that the billing files left the firm. He did not think that they were going to leave, he didn't know the files were going to leave the office. And indeed, you testified that that—

Mr. CLARK. Rick was referring to his Madison files, he would have been upset.

The CHAIRMAN. Yes, you also said billing files should not leave and you would have been upset.

I thank my friend.

Senator FAIRCLOTH. Well, along that line, another question, Mr. Clark. Has the RTC or did they question you on the propriety of removing billing records for Madison from your firm? These are client files—

Mr. CLARK. Well, the billing records are our files. The client files belong to the client.

Senator FAIRCLOTH. But the client being RTC, don't they have to give approval to have the documents removed?

Mr. CLARK. In the client files, yes, sir, they do, absolutely.

Senator FAIRCLOTH. Did they give approval to have them removed?

Mr. CLARK. No, sir, not to—no, they did not.

Senator FAIRCLOTH. Did they question about them being removed without their consent?

Mr. CLARK. I don't think so, Senator, no. They were primarily looking at the billing issues and conflicts.

Senator FAIRCLOTH. Two more questions. Your internal investigation of Mr. Hubbell revealed a \$400,000, in round figures, illegal overbilling. Since that time or during that time, did you by any chance review the billing records of Mr. Foster or Mrs. Clinton to determine if there had been a discrepancy there?

Mr. CLARK. No, sir, not to speak of. I mean, I reviewed the same records—when Mr. Kennedy left, or actually, when all four of the people left to join the Administration, a number of documents were dumped on my desk literally to sort of sort out who was to get what in the matter of clients, so that there were records of Mrs. Clinton, Mr. Kennedy, Mr. Hubbell, and Mr. Foster.

It was in May of that year in reviewing those records that I discovered—first discovered what at that point were just questions in Mr. Hubbell's billing practices, so I certainly—at that point I was reviewing the same documents for Mrs. Clinton, for Mr. Kennedy, and for Mr. Foster, and found no discrepancies in those documents. But that's the extent of what I have looked at, other than numerous RTC/FDIC billing memos that I have looked at.

Senator FAIRCLOTH. Mr. Kennedy is now back with the firm?

Mr. CLARK. Yes, sir.

Senator FAIRCLOTH. Do you think Mr. Kennedy did a good job—and I realize he's with the firm and this is probably not a fair question—but as a managing partner in 1992 when he allowed records to be removed from the firm and lost or destroyed or whatever?

Mr. CLARK. I certainly think Mr. Kennedy did a good job. I don't—I know for a fact, he has told me, that he had no knowledge, and I have confidence that had he had knowledge, he would have said that was not the thing to do.

Senator FAIRCLOTH. He did not know these records were being removed?

Mr. CLARK. No, sir, he did not.

Senator FAIRCLOTH. Let me ask you another question. Do you know, who is Amy Stewart?

Mr. CLARK. She's one of my partners.

Senator FAIRCLOTH. Was she in Washington during the spring of 1993?

Mr. CLARK. Yes, sir. It is my understanding she was for some period of time.

Senator FAIRCLOTH. Do you know what she would have been doing here?

Mr. CLARK. I think this was during the health care debate, and it's my—Amy has a significant practice in antitrust, and it is my understanding that she was doing some research on some of the antitrust issues on the health care proposals.

Senator FAIRCLOTH. Thank you, Mr. Clark.

Mr. CLARK. Yes, sir.

Senator SARBANES. Mr. Clark, I want to be clear on one thing that Senator Faircloth was pursuing, because I think it got mixed up there. The billing records don't belong to the client; they belong to the firm, do they not?

Mr. CLARK. Yes, that's the way we view it.

Senator SARBANES. Well, I thought he was asking you about billing records and you indicated you'd have to get the permission of the client, but that wouldn't be the case? The billing records are for the firm to handle and dispose of.

Mr. CLARK. That's correct. I was only referring to the client files themselves as far as needing permission.

Senator SARBANES. I don't think that was clear on that exchange.

Mr. CLARK. OK. I apologize.

Senator SARBANES. I wanted to ask one other question and get it very clear on the record this notion of a firm destroying documents. That is an established practice in law office management, is it not, that after periods of time, you sort of clean out the files, you avoid the expense of storing everything. Is that a standard practice?

Mr. CLARK. Yes, sir, because of the expense of maintaining that paper, I think all law firms struggle with that issue.

Senator SARBANES. So the notion that you were, as a regular procedure, destroying files ought not to cause any anxiety. That's what good management requires law firms to do; is that correct?

Mr. CLARK. Yes, sir. We try to consistently encourage it.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Just a final question. I think we are winding down toward the end here. I have put in front of you a copy of the option agreement of May 5 that we have been talking about that is reflected in Mrs. Clinton's billing records to have spent some time drafting or reviewing a draft of this document. Can you take

a look at the document and see whether anywhere in the document it refers to Castle Grande?

[Witness reviewed the document.]

Mr. CLARK. In a very quick read, I don't see any reference to those words, no, sir.

Mr. BEN-VENISTE. On the second page, which is SINTR 00014, toward the bottom of the page, you see a legend that goes 0190g?

Mr. CLARK. Yes, sir.

Mr. BEN-VENISTE. That is an internal Rose computer designation, is it not?

Mr. CLARK. It's a document number, yes, sir.

Mr. BEN-VENISTE. It's a document number and the small G there refers back to a computer system that was in existence in 1986?

Mr. CLARK. That's correct, yes, sir.

Mr. BEN-VENISTE. And as a result of reviewing that, you were able to determine that that document had been prepared on a computer or word processor that was under the authority of Mrs. Clinton and people who work with her at that time?

Mr. CLARK. That's—

Mr. BEN-VENISTE. Is that correct?

Mr. CLARK. That's almost correct. I mean, each attorney was assigned a library, and that reflects that when this document was created and stored in the library, it was stored in Mrs. Clinton's library.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Clark, I just want to focus on this issue of document destruction for a moment. Was there any policy back in 1988 with respect to client files about whether it was necessary to check with the client to see whether the client wanted to have documents returned before they were destroyed?

Mr. CLARK. A policy only to the extent that it was pretty much up to the individual attorney to determine whether that was necessary or not, depending upon the contents of the files. Sometimes we would check with the clients but other times we would not for very dated files.

Mr. CHERTOFF. Let me ask you this question. If you represented a bank in transactions and you learned that the bank was put into receivership in the late 1980's during what everybody knows as the savings and loan crisis, it would be a pretty fair assumption that there might be some litigation arising later regarding the transactions surrounding the bank?

Mr. CLARK. I think that's a fair assumption, yes.

Mr. CHERTOFF. Don't you think it would be a good policy for a lawyer in that circumstance to check with the client to make sure that files relating to the transaction weren't destroyed?

Mr. CLARK. It probably would be a good policy. Unfortunately, I don't think we had it.

Mr. CHERTOFF. The client in the case of a bank or savings and loan in receivership would be the RTC; right?

Mr. CLARK. That's correct. Well, on this one, yes.

Mr. CHERTOFF. Now since you were asked a question by Mr. Ben-Veniste about whether the real estate covered by the option that he has identified as SINTR 13 through 17, you have been asked

whether that was Castle Grande. I would like to ask you whether it wasn't a fact that the entire parcel of property which was purchased as part of the so-called IDC transaction in late 1985, and which apparently you have had an opportunity to study in the last couple of years, that entire transaction was referred to as Castle Grande; correct?

Mr. CLARK. By us?

Mr. CHERTOFF. Colloquially, generally in the community in Little Rock.

Mr. CLARK. Internally, we referred to it as IDC. Certainly in the newspaper they continually referred to it as Castle Grande, yes, I think that's true.

Mr. CHERTOFF. But for example, back in 1985 and 1986, do you know whether the map setting forth the Little Rock industrial park area that was covered by this transaction was entitled "Castle Grande feasibility study"?

Mr. CLARK. I don't know. I don't think I've ever seen the map.

Mr. BEN-VENISTE. Let me help you out a little bit. We'll pass it down to you and put it up on the Elmo.

Mr. CLARK. OK. I have it now.

Mr. CHERTOFF. See it says, "Castle Grande feasibility study"?

Mr. CLARK. Yes, sir, it does.

Mr. CHERTOFF. Also says, "Little Rock South Industrial Park"?

Mr. CLARK. Yes.

Mr. CHERTOFF. Now still with respect to the option, you were asked questions about that little number on the bottom, 190g. That was Mrs. Clinton's attorney number?

Mr. CLARK. No, the 0190 was just a document number. It would have been sequential as documents are created. The little G is the thing that denotes——

Mr. CHERTOFF. The little G is. And that would identify the document as being in her library?

Mr. CLARK. That's correct.

Mr. CHERTOFF. What does that mean?

Mr. CLARK. Well, whenever a document was created in the system, of course the system has limited memory, so every so often the documents would have to be archived onto disk, and so this means that this document was eventually archived onto a disk that was designated as part of Mrs. Clinton's library.

Mr. CHERTOFF. Excuse me one moment, please. Still on this issue about Castle Grande, I want to show you one other document, Mr. Clark. It is the minutes of a meeting of the board of directors of the Madison Financial Corporation, September 12, 1985. We're going to make sure you have a copy of it.

Mr. CLARK. I do.

Mr. CHERTOFF. Your understanding now is that this transaction involved the splitting of the IDC property into two parts, one part of which was purchased in the name of Seth Ward and one part of which was purchased by Madison Financial Corporation?

Mr. CLARK. I believe that's correct, yes, sir.

Mr. CHERTOFF. Do these appear to be the minutes authorizing the purchase of 400 acres of this, within this IDC development?

Mr. CLARK. For a mobile home development, yes.

Mr. CHERTOFF. In fact, did it not identify Castle Grande Estates as being, and I emphasize the word "estates," as being the name that had been designated for this portion of IDC, even in advance of its purchase?

Mr. CLARK. It says, "Per the purchase of this development to be known as Castle Grande Estates," yes.

Mr. CHERTOFF. Let me still focus on this issue of the purchase, because one of the issues that's arisen with respect to this Pillsbury Report is, again, the significance of the evidence they did not have. It's your understanding that the lawyers who produced the Pillsbury Report—at that point in time—were not aware of a connection between Mrs. Clinton and the purchase of the original IDC property that was closed in September?

Mr. CLARK. I think that's correct, yes.

Mr. CHERTOFF. But you are also aware from the report that there was at least one backdated document; right?

Mr. CLARK. Yes.

Mr. CHERTOFF. And you also are aware that at least to this point in time no one has discovered when that document was actually prepared?

Mr. CLARK. Not to my knowledge, no.

Mr. CHERTOFF. Have you been able to determine from your review of the timesheets that were discovered a couple of weeks ago that Mrs. Clinton in fact had conversation about the sale—or the original purchase of that property in November with Seth Ward?

Mr. CLARK. When you said timesheets, you mean billing records?

Mr. CHERTOFF. Billing records.

Mr. CLARK. They say what they say. I don't recall every entry, but there were several conversations with Mr. Ward, yes.

Mr. CHERTOFF. Well, there was a conversation in November 1985, "Conference with Seth Ward regarding purchase from Brick Lyle." Brick Lyle was the seller of the property?

Mr. CLARK. I think he was the president of the corporation that sold it, yes.

Mr. CHERTOFF. Then there were conversations in December with Darrell Dover, who was the lawyer who was involved with the transaction on the part of the seller; right?

Mr. CLARK. Yes, sir, that's correct.

Mr. CHERTOFF. These were conversations Mrs. Clinton had in November and December; right?

Mr. CLARK. That's correct.

Mr. CHERTOFF. And you would agree with me that these billing records would certainly give an investigator additional leads to pursue in evaluating what connection Mrs. Clinton had with respect to the sale and why—given the fact that there are backdated documents, to ask questions concerning why she would have had discussions about the sale in November and December if the sale was consummated in September?

Mr. CLARK. It was new information, yes, sir.

Mr. CHERTOFF. Now finally let me address one other thing. I will give you a copy of this memorandum involving the conflict of interest review dated November 1, 1988. Mr. Ben-Veniste had asked you the question whether you knew if this was circulated to all attorneys. Do you have a copy of it in front of you?

Mr. CLARK. Yes, sir, I do.

Mr. CHERTOFF. RS 749. Does it say, "To all attorneys"?

Mr. CLARK. Yes, it does.

Mr. CHERTOFF. Mrs. Clinton was an attorney at that time at the firm?

Mr. CLARK. Yes.

Mr. CHERTOFF. Just there going to the last page, it indicates, there's an entry here, it's the second page of the entry for Madison. It says, "problem loans, affiliated persons." Do you see in that a reference to Castle Grande, Little Rock, Arkansas?

Mr. CLARK. Yes, sir.

Mr. CHERTOFF. Do you also see a reference to Chris Wade?

Mr. CLARK. Yes, sir.

Mr. CHERTOFF. Did you know that Chris Wade handled real estate transactions for the Whitewater Development project that Mrs. Clinton and Mr. McDougal and then Governor Clinton were partners in?

Mr. CLARK. Did I know or do I know?

Mr. CHERTOFF. Do you know?

Mr. CLARK. I know now, yes, sir.

Mr. CHERTOFF. Did you know at the time?

Mr. CLARK. No.

Mr. CHERTOFF. To your knowledge, did Mrs. Clinton indicate to you in 1988—and when I say, "to you," I mean, to anyone you know of in the firm other than Mr. Foster and Mr. Hubbell—that she had business relationships or business transactions with Mr. Wade involving Whitewater?

Mr. CLARK. No, sir.

The CHAIRMAN. Would you agree that that would also be something that would be relevant in doing a conflicts check?

Mr. CLARK. I would say to the extent of doing this work, all of that would be relevant, yes.

Mr. BEN-VENISTE. Just a couple of questions to follow up. Do you know who actually thought up the name of Castle Grande Estate for this trailer park?

Mr. CLARK. No, sir.

Mr. BEN-VENISTE. It's kind of a grandiose name. You said you referred to it in the firm, this whole matter on behalf of your client, as IDC during that period of time; is that correct?

Mr. CLARK. Yes, sir.

Mr. BEN-VENISTE. It would not strike you as odd that Mrs. Clinton, in trying to recollect what work she did back 11 years ago, would have also referred to it as IDC; correct?

Mr. CLARK. Correct.

Mr. BEN-VENISTE. Now, Mr. Chertoff was kind enough to show you a property disposition map that—and indeed in the option agreement, that so much has been made of, that to suggest that she must have known that she was performing some work in writing an option that somehow involved Castle Grande Estates, a trailer park, is in no way referenced in the document itself; it is no way described as Castle Grande Estates. But now we have here introduced a property disposition. Do you happen to know where this came from?

Mr. CLARK. No, sir. This is the first time I have seen it.

Mr. BEN-VENISTE. Well, we got it from a Borod & Huggins Report that was done some years ago, that looked into this matter. Do you have any reason to believe that Mrs. Clinton ever had this in her possession?

Mr. CLARK. No, sir, one way or the other.

Mr. BEN-VENISTE. Similarly, the board of directors' minutes from Madison Financial, which is SINTR 00030, was shown to you, where there is some reference to Castle Industries and to Castle Grande Estates, do you have any reason to believe that this was a document that either Mrs. Clinton prepared or was shown at some point?

Mr. CLARK. No, sir, one way or the other, no.

Mr. BEN-VENISTE. Nothing further.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Mr. Clark, in attempting to comply with the various subpoenas that have been served on the Rose Law Firm, you looked for documents related to the IDC/Castle Grande transaction; am I right?

Mr. CLARK. Yes.

Mr. GIUFFRA. You in fact spent a lot of time looking for those types of documents?

Mr. CLARK. Yes.

Mr. GIUFFRA. Am I correct that the only files that you were able to find were those relating to the liquor and sewer research that was done?

Mr. CLARK. Of course we had copies of Mr. Massey's files.

Mr. GIUFFRA. This is on the IDC transaction.

Mr. CLARK. Oh, the IDC transaction, I believe that's correct, yes.

Mr. GIUFFRA. The reason you were able to produce the option agreement because you went and looked into the backup computer disk and pulled it up?

Mr. CLARK. No, actually the first time we ever saw the option agreement was when it was provided to us by the Pillsbury firm.

Mr. GIUFFRA. But they went into the computer disk?

Mr. CLARK. No. They had gotten that—we had never seen that option agreement. They produced it to us, when they were interviewing Mr. Thrash and only when we saw the Wang number did we understand it was one of our documents. Those Wang floppies are—they are very—there is not a system around that reads them. We have had a few of them read for the Independent Counsel. We had to send them to New York to get it done.

Mr. GIUFFRA. Were you able to find the closing documents for the transaction?

Mr. CLARK. No.

Mr. GIUFFRA. Were you able to find the contract for sale?

Mr. CLARK. Well, when you say "able," we have since found copies but not within our internal records, no.

Mr. GIUFFRA. You never found any correspondence, for example, with the seller's attorney?

Mr. CLARK. Not within our records.

Mr. GIUFFRA. You would normally expect to find that kind of documentation in your files with regard to a transaction like this?

Mr. CLARK. You would typically, yes.

Mr. GIUFFRA. Mr. Thrash was heavily involved in the transaction; you didn't find any of his documents?

Mr. CLARK. No, he has no record of maintaining a file on this.

Mr. GIUFFRA. Turn to another subject, which is Webster Hubbell, who was a former partner of your firm.

Mr. CLARK. Correct.

Mr. GIUFFRA. He was Associate Attorney General of the United States?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Number 3 position in the Justice Department. Did you ultimately determine that Mr. Hubbell had stolen money from his partners at the Rose Law Firm?

Mr. CLARK. We did.

Mr. GIUFFRA. Approximately how much money did you determine Mr. Hubbell had stolen from his partners at the Rose Law Firm?

Mr. CLARK. He pled guilty to approximately \$485,000 in theft.

Mr. GIUFFRA. You only had firm records from 1989 through the time of his departure in 1993; isn't that right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. You, in fact, believe that Mr. Hubbell stole more money from his partners?

Mr. CLARK. I do.

Mr. GIUFFRA. Did Mr. Hubbell also steal from the clients of the Rose Law Firm?

Mr. CLARK. He did.

Mr. GIUFFRA. And did he steal from the Resolution Trust Corporation?

Mr. CLARK. They were one of the clients.

Mr. GIUFFRA. Now——

Mr. CLARK. We have repaid all that money, by the way.

Mr. GIUFFRA. When did you first learn that there was a problem regarding Mr. Hubbell's disbursements?

Mr. CLARK. I am not sure it even rose to the level of a problem at that point. The first time we discovered, or I realized there was an issue would have been in either late April or early May 1993.

Mr. GIUFFRA. And he was then Associate Attorney General?

Mr. CLARK. Yes.

Mr. GIUFFRA. What did Mr. Hubbell tell you when you advised him there may be an issue involving his disbursements?

Mr. CLARK. Our initial meeting with him, we had a little schedule saying at issue was there were some disbursements that we identified, some fairly significant disbursements, \$1,500, that sort of thing, which normally you would see billed to a client and these had not been billed to a client, thereby meaning the firm had paid for them. We presented that and said we need an explanation of this. He said sure, no problem, I am very busy, let me look at my records and I will get back to you, and we said great.

Mr. GIUFFRA. He attempted to assure you there was no problem there.

Mr. CLARK. Yes.

Mr. GIUFFRA. Did you then go speak to Mr. Hubbell in June 1993?

Mr. CLARK. He came to Arkansas for personal reasons, and I asked one of my partners who was going to be with him to ask him to stop by the firm so I could speak with him.

Mr. GIUFFRA. Did you see Mr. Hubbell on that occasion?

Mr. CLARK. Yes, I did.

Mr. GIUFFRA. What did Mr. Hubbell say?

Mr. CLARK. We discussed the fact that he had been busy and we acknowledged that but that this issue was not going to go away, we needed these questions answered, and he said he understood. He was busy, and he would try get back to us as soon as possible. And we said—

Mr. GIUFFRA. And again Mr. Hubbell assured you there was no problem?

Mr. CLARK. Absolutely.

Mr. GIUFFRA. Did you see Mr. Hubbell in December 1993, around Christmastime?

Mr. CLARK. I did not see him. I spoke to him on the telephone.

Mr. GIUFFRA. What did Mr. Hubbell say at that point?

Mr. CLARK. At that point, we had broadened significantly our investigation, and unlike the earlier visits, I was absolutely certain that there were improprieties. And he had spoken to one of our other lawyers, and I asked him to call me because I wanted to make sure he got the message. I talked to him and said that certain of his partners had thought that he had misappropriated funds, and we needed answers immediately. He said that was not the case, that he had not misappropriated funds, that we should try to work this thing out.

Mr. GIUFFRA. Let's turn to one last subject. Your bills to the IDC matter. Now you indicated that you thought that the January 30, 1986 bill reflected work that had been done by Mr. Thrash going back to August; is that right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. We are a bit confused because if you look at the document DKSJN 28930, which is your client billing and payment history?

Mr. CLARK. Yes.

Mr. GIUFFRA. Now on that page, indicates the—

Mr. CLARK. Mr. Giuffra, you have only given me the first page.

Mr. GIUFFRA. That's in the larger billing records.

Mr. CLARK. I have it now. I'm sorry.

Mr. GIUFFRA. It is 28930.

Mr. CLARK. I have it.

Mr. GIUFFRA. Now doesn't that client billing and payment history indicate that the September 20, 1985 bill, which is the bill that reflects Mr. Thrash's work including attending the IDC board meeting, was billed and paid?

Mr. CLARK. It does, but I think the quickest way to clear this up, if you will look at the January 30, 1986 bill, the total for that bill is \$4,670.35.

If you will take the September 20, 1985 bill, the October 29, 1985 bill, and the January 29, 1986 bill as reflected on this, you will see it totals exactly to that amount. So it appears to me Mrs. Clinton produced an internal bill in September and October to clear out the trust account. And then when she actually sent the bill to the cli-

ent in January, she included the total amount in that bill. That's why those numbers don't reflect each other.

Mr. GIUFFRA. But if you could take a look at the document Bates number DKSJ 28979, which is the September 20, 1985 bill.

Mr. CLARK. I will have to find it.

Mr. GIUFFRA. 28979.

Mr. CLARK. I'm sorry. These aren't in order. OK, I have it.

Mr. GIUFFRA. This would be the bill that was sent to the client; am I correct?

Mr. CLARK. That's correct.

Mr. GIUFFRA. And that bill indicates that, at least on the bill there is a stamp—

Mr. CLARK. No, this bill was not sent to the client.

Mr. GIUFFRA. How can you tell that?

Mr. CLARK. Because—I mean, you can't tell with certainty, but if you will see, again, looking at the billing and payment history, it was a typical practice when you had a retainer situation to remove the money from the non-interest-bearing trust account as work was performed, but only wait until an event, whether it be the conclusion of the transaction or the end of the fiscal year, to actually forward that bill. So, this bill is reflected as paid, because the money was removed from the trust account.

But again, if you look at the January 1986 bill, you can see, in our billing and payment history, it shows that only \$3,462.50 was billed, but in fact, all you have to do is look at the bill and know that's not correct. It is \$4,670.35. The difference is to the penny those two previous bills.

Mr. GIUFFRA. So the net of all of this is that \$1,818.75 is either the amount of additional work that Mrs. Clinton did or a premium that was charged to the IDC matter?

Mr. CLARK. Well—what I was just explaining doesn't really address the \$1,800, the \$1,800 is still in my judgment the amount of the additional time that Mrs. Clinton must have spent on this.

Mr. GIUFFRA. OK, so you would think Mrs. Clinton did about 14½ additional hours on IDC that's not accounted for in the billing memoranda?

Mr. CLARK. I think she would have done 14 additional hours. Whether it was related to IDC, I don't know.

Mr. GIUFFRA. We don't know what the nature of the work that Mrs. Clinton performed that adds up to the \$1,800.

Mr. CLARK. That's correct. That's correct.

Mr. GIUFFRA. Mr. Chairman, I don't have any further questions.

Senator SARBANES. Mr. Clark, I want to be clear on one point that Mr. Giuffra has been pursuing, because the general information that's out there is that Mrs. Clinton did about 60 hours of work with respect to this, these Madison matters. Now as I understand it, that 60 hours would include within it the 14 hours that's being talked about here; is that correct?

Mr. CLARK. Senator, the 60 hours is not my number. I don't know who put that forward. I mean, the easiest way I would look at it would be to take the total allocations, divide it by \$125 and whatever that hour product is, that's what it is. That's the way I would do that.

Senator SARBANES. I think that's the process that was followed to get the 60 hours.

Mr. CLARK. If you took her total allocations, divided it by \$125 and it was approximately 60 hours, then yes, it would include that 14 hours.

Senator SARBANES. Right, OK.

The CHAIRMAN. Did you have occasion to speak to Mr. Hubbell's former secretary with respect to whether or not she drafted the letter of September 24, 1985?

Mr. CLARK. No, sir, I have not.

The CHAIRMAN. She indicates apparently to the investigators who did the Pillsbury Report that it looked like the format she would use. Were you aware of that?

Mr. CLARK. Yes, sir.

The CHAIRMAN. It looked like the format she would use. Have you got a copy of that September 24th letter there?

Mr. CLARK. I believe I do, Senator. Hang on.

The CHAIRMAN. Is this a well articulated, precise letter, containing the legal agreement? Would you summarize it in that way, or would you say that it would appear to be drafted under the supervision of an attorney?

Mr. CLARK. Senator—

The CHAIRMAN. Let me send that copy down plus the addendum.

Mr. CLARK. OK, I have it now, Senator.

The CHAIRMAN. I mean, that looks like a fairly comprehensive, detailed piece of legal work, wouldn't you agree?

Mr. CLARK. Senator, I would agree that this appears to be a fairly formal letter.

The CHAIRMAN. I mean, that certainly wasn't drafted by Mr. McDougal. You saw what he drafted, you saw a comparison; isn't that correct?

Mr. CLARK. That's correct, and I think Mr. Ward said he drafted it, but—

The CHAIRMAN. You don't believe that Mr. Ward could have accomplished that either, do you?

Mr. CLARK. I don't know Mr. Ward, but I—it certainly has some formality to it, yes.

The CHAIRMAN. Right. Do you think it would be a reasonable interpretation to believe that Mr. Hubbell helped prepare this? Indeed, because Mr. Ward said sometimes he would come in and ask Mr. Hubbell—who was his son-in-law, right? And Mr. Ward would chat with Mr. Hubbell and sometimes Mr. Ward would ask Mr. Hubbell's secretary to type things. I mean, this letter was drafted with the help of a lawyer.

Mr. CLARK. Senator, the only reason I would disagree, is again in my practice I would not purchase a piece of property based upon a letter. But I would hope a lawyer would be a little more formal than a letter.

The CHAIRMAN. Well, I want to tell you, the record indicates—let me refer you now to the billing record, the first one being November 20, 1985, "conference with Ward, conference with Hubbell, and Hillary Clinton." Billed for an hour. Do you see that?

Mr. CLARK. No, I haven't found it yet. November 20th, you say?

The CHAIRMAN. Yes, DKS N 029008. I will send it down to you if that will help.

Mr. CLARK. I found it now. Yes, sir, I see it.

The CHAIRMAN. That is Seth Ward and Webb Hubbell. Let's go to this next one, November 26th. Do you have that? That's DKS N 029002, November 26th.

Mr. CLARK. OK.

The CHAIRMAN. Conference with whom, can you read that?

Mr. CLARK. Are you talking about Mrs. Clinton's entry?

The CHAIRMAN. Yes.

Mr. CLARK. Says, "Conference with S. Ward, conference with T. Thrash, conference with Webb Hubbell."

The CHAIRMAN. Isn't it interesting that Hubbell doesn't bill any time? Did he bill any time on that day?

Mr. CLARK. No, sir.

The CHAIRMAN. Did he bill any time on the previous day, on November 20th?

Mr. CLARK. Not on this matter, no.

The CHAIRMAN. We see 14 phone calls to Seth Ward, who becomes the person who takes off this property involved in Castle Grande, all those communications and billings from Mrs. Clinton. You understand why we would ask this question, wouldn't you?

Mr. CLARK. Oh, absolutely.

The CHAIRMAN. Then the letter appears to have been prepared by Mr. Hubbell who in this matter never appears as the billing partner, or his secretary.

Mr. CLARK. I haven't seen any unreasonable questions, Senator, if that's—

The CHAIRMAN. The billing partner on this, on these occasions, is who?

Mr. CLARK. Mrs. Clinton.

The CHAIRMAN. OK. Any further questions, Mr. Chertoff?

Senator Sarbanes.

Mr. BEN-VENISTE. I have one, not to put too fine a point on this. But you recognized, did you not, at the Rose Law Firm that Mr. Hubbell had done a great deal of work for his father-in-law that was not recorded in the time records at the firm?

Mr. CLARK. We know that now, yes.

Mr. BEN-VENISTE. So if Mr. Hubbell, in fact, drafted this agreement, that would just be one more thing?

Mr. CLARK. That's correct.

Senator SARBANES. Mr. Chairman, as I understand it, we are going to meet next Tuesday, Wednesday, and Thursday.

The CHAIRMAN. Next Tuesday and Thursday.

Senator SARBANES. Only Tuesday and Thursday?

The CHAIRMAN. Yes.

Senator SARBANES. Who will we be hearing from on those days?

The CHAIRMAN. Mr. Lyon on Tuesday and Mrs. Beverly Bassett Schaffer on Thursday.

Senator SARBANES. On Thursday or on Tuesday?

The CHAIRMAN. Thursday, and two others.

Senator SARBANES. Who?

Mr. CHERTOFF. Two other former employees of the savings and loan and securities commission, Mr. Handley and Mr. Brady.

Senator SARBANES. Is Mr. Lyon the only person we are hearing from on Tuesday?

Mr. CHERTOFF. That's what we have planned.

Senator SARBANES. At 10 a.m., Mr. Chairman?

The CHAIRMAN. At 10 or 10:30 a.m.

Senator SARBANES. How about 10 a.m.? I would think 10 a.m.

The CHAIRMAN. Mr. Clark, again, let me thank you. I want to thank you for your straightforwardness, for your candor. This is not an easy situation, you know the law firm, through circumstances beyond your control, finds itself in this situation. So I want you to know that the Chair does appreciate what you have had to go through, and we certainly appreciate your testimony today.

Mr. CLARK. Senator, let me say I appreciate the opportunity to come here. It is nice to finally be talked with rather instead of just talked about.

The CHAIRMAN. I think you have attempted to answer our questions to the absolute best of your recollection, that you have not withheld anything from this Committee, and you have answered in all candor. I think where those observations can be made about witnesses, we have a duty to try set that record straight.

Mr. CLARK. No, we understand.

The CHAIRMAN. —because, as my colleague and friend Senator Sarbanes pointed out many times, a person who comes and who does the best of his ability, notwithstanding I think that they may find themselves in positions which are unfair, where we can make judgments, I think in cases such as yourself, I certainly want to commend you and thank you for your cooperation.

Mr. CLARK. Thank you, Senator.

Senator SARBANES. Mr. Chairman, I would also like to thank Mr. Clark for his testimony. In fact he has been able to shed a great deal of light on some of these billing questions, as we indicated last week, when we had hoped to hear from him.

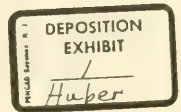
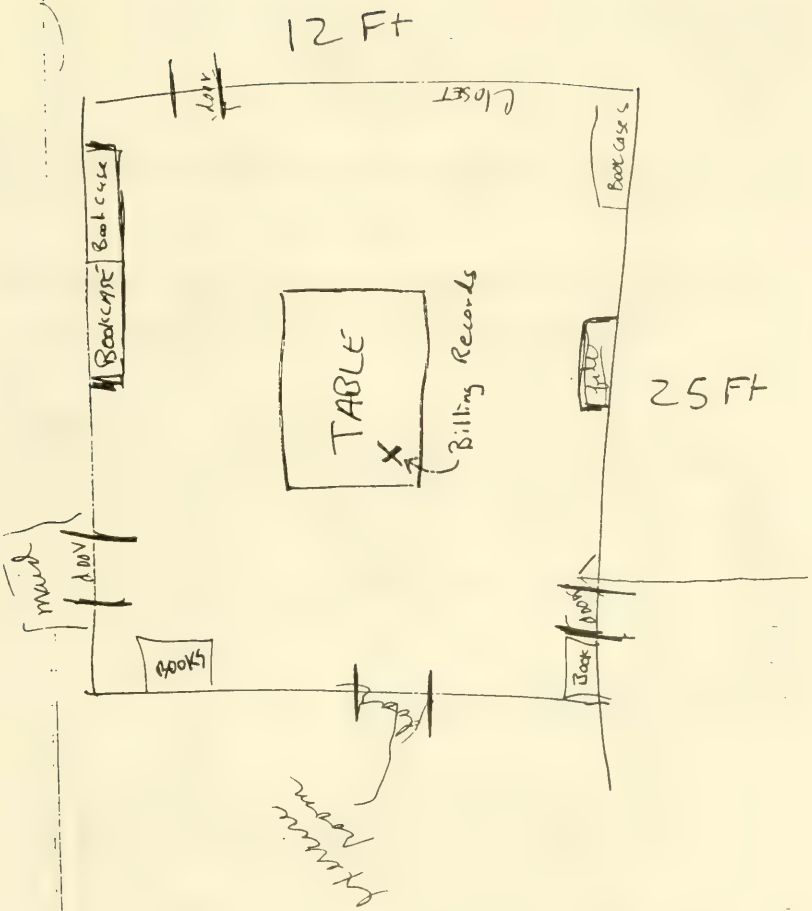
I must say, I think it is very important that we got on the record, this true story about this allegation, that had such media currency about destruction of documents, an alleged improper destruction of documents at the Rose Law Firm which gained widespread currency in the media for quite a period of time, and which, upon apparently on careful inquiry and investigation, was just not the case. I mean, these Madison/Whitewater papers were not being shredded as it was asserted in the press. I think it is very important that you were able to place that on the record.

Mr. CLARK. I appreciate your remarks, Senator.

The CHAIRMAN. We stand in recess until Tuesday at 10:30 a.m.

[Whereupon, at 4:22 p.m., the hearing was adjourned, to reconvene at 10:30 a.m., on Tuesday, January 23, 1996.]

[Appendix supplied for the record follow:]



ROSE '84 FIRM									
CLIENT BILLING & PAYMENT HISTORY									
ST. CLIVE IOWA									
FOR PERIOD 1 JAN 86 TO 31 DEC 99									
CLIENT 98262 850153Y GUARANTY SAVINGS/LOAN									
TITLE									
CL:ENT/MATER	BILL TYPE	INVOICE DATE	OVER/UNDER	REALIZATION	BILLED /HOUR	PMT TYPE	AMOUNT	SURPLUS	BALANCE
INVOIC OFFERING		05/08/85	2,018.00		76.73	05/21/85	(2,018.00)		.00
INV W/ REAL	DISB					CASH REC			.00
INV W/ REAL	DISB	06/10/85	185.00		88.57	36/17/85	(186.00)		.00
INV W/ REAL	DISB		4.20			A/R TFR.	(4.20)		.00
INV W/ REAL	DISB	07/15/85	1,800.00		40.38	37/24/85	(1,800.00)		.00
INV W/ REAL	DISB		34.00			CASH REC	(34.00)		.00
INV W/ REAL	DISB	08/09/85	837.00		75.41	11/19/85	(752.35)		86.45
INV W/ REAL	DISB		13.35			A/R TFR.	(13.35)		.00
INV W/ REAL	DISB	09/12/85	90.00			11/19/85	(86.65)		.00
INV W/ REAL	DISB					A/R TFR.			.00
INV W/ REAL	DISB	12/05/85	655.00		75.00	12/09/85	(190.00)		.00
INV W/ REAL	DISB					A/R TFR.			.00
INV W/ REAL	DISB	01/28/86	1,755.00		79.88	12/03/85	(655.00)		.00
INV W/ REAL	DISB		15.50			A/R TFR.			.00
INV W/ REAL	DISB	07/28/86	5.59		128.10	01/30/86	(1,755.00)		.00
INV W/ REAL	DISB					A/R TFR.	(18.50)		.00
INV W/ REAL	DISB	01/15/87				08/05/86	(5.59)		.00
INV W/ REAL	DISB					CASH REC			.00
INV W/ REAL	DISB	06/10/85	879.00			31/28/87			.00
INV W/ REAL	DISB		13.00			CASH REC	(6.30)		.00
INV W/ REAL	DISB	09/12/85	21.00				(7,431.00)		.00
INV W/ REAL	DISB		2.10				(111.96)		.00
INV W/ REAL	DISB	12/05/85	722.50						.00
INV W/ REAL	DISB		2.40						.00

DKSN028928

LAW OFFICES OF
ROSE LAW FIRM
 A PROFESSIONAL ASSOCIATION
 120 EAST FOURTH STREET
 LITTLE ROCK, ARKANSAS 72201
 PHONE (501) 378-9131

CLIENT: 90762

MADISON GUARANTY SAVINGS/LOAN
 CO. JOHN LATHAM, PRESIDENT
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DATE: 5-21-85

STOCK OFFERING

04/23/85 W. CLINTON

04/23/85 L. BALEDGE

04/23/85 R. MASSEY

04/24/85 W. CLINTON

04/24/85 S. GRIMES

04/24/85 R. MASSEY

04/25/85 W. CLINTON

04/25/85 R. MASSEY

04/26/85 W. GREGORY

04/26/85 R. MASSEY

04/29/85 W. CLINTON

CONFERENCE WITH J. MCCUGAL AND J. LATHAM; CONFERENCE WITH R. MASSEY; CONFERENCE WITH W. GREGORY; CONFERENCE WITH R. MASSEY; RESEARCH ON PREFERRED STOCK OFFERING; CONFERENCE WITH JOHN LATHAM; CONFERENCE WITH HILLARY RODHAM CLINTON; CONFERENCE WITH LES BALEDGE; TELEPHONE CONFERENCES WITH R. MASSEY, JOHN LATHAM, JAVIS PITTMAN; CONFERENCE WITH R. MASSEY; REVIEW DRAFT DOCUMENTS; DRAFT MINUTES, RESOLUTIONS TO AMEND CERTIFICATE OF INCORPORATION TO CREATE CLASS OF PREFERRED STOCK PER R. MASSEY'S INSTRUCTIONS; RELATED RESEARCH; PREFERRED STOCK OFFERING; RESEARCH STATE & FEDERAL LAW ON STOCK AUTHORITY; DRAFTING DOCUMENTS; REVIEW OF SUBSCRIPTION AGREEMENTS; CONFERENCE WITH R. MASSEY; DRAFTING & REVISE DOCUMENTS; CONFERENCE WITH JOHN LATHAM AND HILLARY RODHAM CLINTON; CONFERENCES WITH R. MASSEY REGARDING CAPITAL - RAISING PLANS; REVIEW OF CONSENT ON DRAFT SUBSCRIPTION AGREEMENT; CONFERENCE WITH JOHN LATHAM REGARDING CLASS; RESEARCH PUBLIC REGISTRATION STATEMENTS; DRAFTING DOCUMENTS; ~~TELEPHONE CONFERENCE WITH R. MASSEY, MISSOURI COMMISSIONER; TELEPHONE CONFERENCE WITH R. MASSEY~~

ROSE LAW FIRM

DKSN028934

ROSE LAW FIRM
A PROFESSIONAL ASSOCIATION
130 EAST JOWITT STREET
LITTLE ROCK, ARKANSAS 72201
PHONE (501) 375-9131

tpt

CLIENT: 102-0

MAGNION GUARANTY SAVINGS/LOAN
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OCTOBER 27, 1985
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MATTER:

S

P.O.C.

09/10/85 T. THATCH

TELEPHONE CONFERENCE WITH SETH WARD;
TELEPHONE CONFERENCE WITH LUTON POWEN
AT SEACH ABSTRACT

10/07/85 T. THATCH

TELEPHONE CONFERENCE WITH SETH WARD,
PEGGY ROGERS; REVIEW TITLE COMMITMENT

10/14/85 T. THATCH

TELEPHONE CONFERENCE WITH PEGGY
ROGERS, STEVE WARD, DAVID ROVER AND
SETH WARD; ATTEND CLOSING

10/17/85 T. THATCH

MEETING WITH SETH WARD; REVIEW BILL OF
ASSURANCES

TOTAL FOR SERVICES 1050.00

TOTAL THIS STATEMENT 1050.00

U/A

PAID 550.00
CK #
DATE 11-19-85

DKSN028980

ROSE LAW FIRM

525

LOW OFFICES OF
ROSE LAW FIRM
A PROFESSIONAL CORPORATION

188 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201
PHONE (501) 375-4131

1 nrc 2751
rtd 468
rtd 262

CLIENT: C-7742

NATION GUARANTY SAVINGS/LOAN
PO BOX 147414, ROBERTSON
14TH AND MAIN STREETS
LITTLE ROCK, AR 72201

JANUARY 3, 1983

INV# 9389

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #77-0438646) - RETURN THIS STUB WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED THROUGH JANUARY 30, 1983 BY W. B. CLINTON, T. THURMAN, P. SCHWAB, K. SHERIN AND J. BIRCH:

ATTOR: S - L.O.C.

REVIEW CONTRACT FOR SALES; TELEPHONE CONFERENCE WITH SETH WARD AND CHARLIE COOK; DARYL DOVER, ALTON BOWEN AT BEACH ABSTRACT; PESSY ROGERS AND STEVE WARD; MAKE CHANGES IN DOCUMENTS; REVISE, CHANGES IN AGREEMENTS; CORRESPONDENCE TO ALL PARTIES; ATTEND Y. D. C. BOARD MEETINGS; PREPARE CORPORATE RESOLUTIONS; REVIEW TITLE COMMITMENTS; ATTEND CLOSINGS; REVIEW BILL OF RESURANCES; MEETINGS WITH SETH WARD, BOB WILSON AND CHARLIE COOK; RESEARCH ON JUDICIAL APPROVALS, PERMITS, ETC., ARE NECESSARY TO OPERATE BEVER AND WATER FACILITIES; MULTIPLE TELEPHONE CONFERENCES WITH STATE AND COUNTY AGENCIES; SEND ABOUT UTILITY STATUS; CONFERENCES WITH SETH WARD REGARDING PROPOSED BECK BROOK LOLE AND PROPOSED INDUSTRIAL DEVELOPMENT ON PLOTS; RESEARCH IN STATE LAW GOVERNING LIQUOR PERMITS; RESEARCH AT COUNTY CLERK'S OFFICE AND ELECTION COMMISSION; TELEPHONE CONFERENCES WITH ELECTION COMMISSION; NUMEROUS TELEPHONE CONFERENCES WITH DARYL DOVER

TOTAL FOR SERVICES	\$4,851.35	
DISBURSEMENTS		
ONE COUNTY MAP		2.35
XEROX COPIES		15.50
DISBURSEMENTS TOTAL	\$18.85	
TOTAL MATTER IS:		\$4,870.35

AIR
transf

PAID 4670.35
CK #
DATE 1-30-86

DKSN029010

ROSE LAW FIRM

**January 30, 1996
Rose Bill to Madison Guaranty S&L
Matter: IDC**

	Standard Value	Difference	Amount to Bill	Difference	Actual Amount Billed
Hillary Clinton	\$912.50 7.3 hours	\$1818.75 14.55 hours	\$2731.25 21.85 hours		
Richard Donovan	\$468.75 6.25 hours	-0-	\$468.75 6.25 hours		
Davis Thomas	\$262.50 3.5 hours	-0-	\$262.50 3.5 hours		
TOTAL	\$1643.75	\$1818.75	\$3462.50	\$1189.00 9.5 hours at \$125 per hour	\$4651.50 \$3007.75 over standard value

8262 MADISON GUARANTY SAVINGS/LOAN
MR. JOHN LATHAM, PRESIDENT
14TH AND MAIN
LITTLE ROCK, AR 72201--

51.0.0.

ATTY	DATE	TIME	VALUE	MATTER	14778
RD	10/18/85	3.30	202.50	RESEARCH ON WHAT APPROVALS, PERMITS, ETC. ARE NECESSARY TO OPERATE SEVERAL WATER FACILITIES; MULTIPLE TELEPHONE CONFERENCES WITH STATE AGENCIES; MEMO TO W.	14778
MUMFELL					
MC	12/01/85	.50	62.50	CONFERENCE WITH M. MASSEY	7464
MC	12/06/85	.50	37.50	TELEPHONE CONFERENCE WITH S. WARD	11354
MC	12/11/85	.50	42.50	TELEPHONE CONFERENCE WITH S. WARD	13618
MC	12/16/85	.50	42.50	TELEPHONE CONFERENCE WITH S. WARD	12398
MC	12/19/85	.50	62.50	TELEPHONE CONFERENCE WITH S. WARD	2562
MC	12/20/85	.50	135.00	TELEPHONE CONFERENCE WITH S. WARD; SEARCH FOR MAP	2194
MC	12/23/85	1.00	135.00	TELEPHONE CONFERENCE WITH S. WARD	2194
MC	12/26/85	1.00	37.50	RESEARCHED COUNTY COURT LOCAL OPTION ELECTION RECORDS	7452
MC	12/27/85	1.00	37.50	CONFERENCE WITH ABC REGARDING NEIGHBORHOOD PRECINCTS SOUTH OF RIVER	7452
RD	12/31/85	1.00	75.00	RESEARCHED LOCAL OPTION LAW	13352
RD	01/02/86	3.00	235.00	COMPLETED RESEARCH ON "COURT" ISSUE; DRAFTED MEMO	13352
RD	01/03/86	1.00	75.00	SENT MEMO TO CLERK FOR ORDER OF COURT REGARDING TOWNSHIP MEETING	13358
DELETION; REVISED MEMO					
MC	03/02/86	1.00	125.00	CONFERENCE WITH S. WARD; CONFERENCE WITH KEN SHENIN	11640
RD	01/14/86	1.33	18.75	MEETING WITH M. CLINTON REGARDING FACT INVESTIGATION	15930
MC	02/18/86	.50	195.00	CONFERENCE WITH J. SPIRO; K. SHENIN, M. DOUGHERTY	15930
RD	01/15/86	.50	37.50	TELEPHONE CONFERENCE WITH S. WARD; CONFIRMATION AND COUNTY CLERK REGARDING WHAT HAPPENED TO OLD UNION TOWNSHIP	46

FREE TOTAL 17.05 1643.75

ATTY	DATE	CHECK	DISB AMT	QUAN	DESCRIPTION OF DISBURSEMENT
FROM	12/24/85	52791	2.35		ONE COUNTY MAP
	SUBMITTED CODE	1	1.50		PHOTOCOPY EXPENSE (.15)
			=====		
	DISB TOTAL		3.35		

THE SUMMARY BY ATTORNEY

ATTORNEY	TIME	STANDARD VALUE	MATTER VALUE	AMOUNT TO BILL	5/HR	LAST	0158
AL MRC WILLARD CLIXTON	7.30	912.50	912.50	2731.35	125.00	01/15/86	---
50 RTO RICHARD DONOVAN	6.25	468.75	468.75	468.75	75.00	01/15/86	---
66 RDT DAVID THOMAS JR.	3.50	262.50	262.50	762.50	75.00	10/16/85	3.53
100 R FM FIRM ATTORNEY	.00						---

DKSN029011

LAW OFFICES
WILLIAMS & CONNOLLY

120 EAST FOURTH STREET, N.W.

WASHINGTON, D.C. 20005

(202) 434-5000

FAX (202) 434-5029

EDWARD BENNETT WILLIAMS (1920-1988)
 PAUL A. CONNOLLY (1932-1976)

DAVID E. KENDALL
 (202) 434-5145

CONFIDENTIAL

November 22, 1993

BY REGISTERED MAIL

Jerry C. Jones, Esquire
 Rose Law Firm
 120 East Fourth Street
 Little Rock, AR 72201

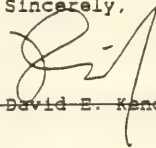
Dear Jerry:

It was good to talk to you today. I am enclosing herewith three file folders, labeled: A3530.1 MADISON GUARANTY LTD. PTNRSHP Application/Brokerage Activities; A3530.2 Madison Guaranty - Net Worth - (1985) Preferred Stock Offering; and A3530.3 MADISON GUARANTY Preferred Stock Offering (Corporate), which were among the late Vincent Foster's files. They appear to me to be files of Rose Law Firm documents. I thought it most appropriate to transmit them to you, for retention and storage.

I would be grateful if you would confirm for me the receipt of these files.

Best wishes for a good Thanksgiving!

Sincerely,



David E. Kendall

Enclosures

DEK/bb

RS 000381

ROSE LAW FIRM

A PROFESSIONAL CORPORATION

ATTORNEYS

130 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201

TELEPHONE (501) 375-8431

TELEFAX (501) 375-3092

J. B. ROSE

Chairman

J. GASTON WILLIAMS
WILLIAM CARROLL
W. DAVID CLAY
C. JOSEPH DAVIS, JR.
GEORGE E. CAMPBELL
HERBERT C. PAUL, III
STANLEY C. PRICE
A. RUTH PROBERT, III
W. HUGH JONES
WILLIAM FOSTER, JR.
WILLIAM L. HUBBELL
WILLIAM W. BIRD, II
WILLIAM L. BARNES
WILLIAM ROBERT CLINTON
C. MARSHALL BUCK
THE ROSE
W. JAMES DICKER
WILLIAM W. KENNEDY, III
WILLIAM B. JENNIN
DAVID A. HENRY

RONALD R. CLARK
SARAH J. GARNETT
KERRY C. JONES
THOMAS S. PUGH
CAROL S. JENSEN
MICHAEL FARMER, JR.
JESSE S. SALLIDEN
J. B. HUNTER BIRD
W. DAVID THOMAS, JR.
JAMES L. WILLIAMS
CATHERINE LAMSTER
RICHARD T. JOHNSON
MICHAEL R. JONES
HARVEY A. THOMAS
RUSSELL GASTON WILLIAMS
RICHARD S. HANLEY
DAVID W. SPEED
CHARLES W. BAKER
OF COUNSEL

April 30, 1985

Mr. Charles Hanley
Arkansas Securities Department
One Capitol Mall
Little Rock, Arkansas 72201

Re: Authorization and Issuance of a class of Preferred
Stock by Madison Guaranty, a Savings and
Loan Chartered under the Laws of the State of Arkansas

Dear Mr. Hanley:

Madison Guaranty, a Savings and Loan chartered under the laws of the State of Arkansas, contemplates a capitalization plan whereby it would authorize and issue a class of ~~non-voting~~ preferred stock which would have preference as to dividends and amounts paid in liquidation. The question has arisen as to whether an Arkansas chartered Savings and Loan Association may under Arkansas law create, authorize and issue a class of preferred stock. For the reasons stated below, we are of the opinion that a state chartered savings and loan may do so.

Arkansas statute 6751364 (1971) provides in pertinent part:

31
25110
4
1971
" ... (T)he Arkansas Business Corporation Act, ... as amended, ... shall be applicable to permanent stock savings and loan associations created or operating under the provisions of Act 227 of 1963 ... and such savings and loan associations shall enjoy the same powers and privileges and be subject to the same duties, restrictions and liabilities as other corporations except so far as the same may be limited or enlarged by the provisions of Act 227 of 1963."

RLF 03182

Mr. Charles Hanley
 April 30, 1985
 Page 2

In short, an Arkansas chartered savings and loan possesses all powers afforded to stock corporations under the Arkansas Business Corporations Act unless the Arkansas Act 227 of 1963, as amended ("Act 227") prohibits the exercise of such powers. It is clear that an Arkansas corporation is empowered to create and issue a class of preferred shares of capital stock (see Ark. Stat. Ann. 64§201 (1966) and 64§202 (1966)). Therefore, an Arkansas chartered savings and loan possessing general corporate powers may authorize and issue a class of preferred stock unless Act 227 prohibits such a capitalization plan.

We find no provisions of Act 227 which expressly or impliedly prohibit the creation of a class of preferred stock by an Arkansas chartered savings and loan association. Rather, there are references throughout Act 227 implying that several classes, including a preferred class, of capital stock of an Arkansas savings and loan may exist. For an example, see Ark. Stat. Ann. 67§816 (1963) which requires that the bylaws of the state savings and loan association describe the "several kinds or classes of shares, stock or certificates which it may issue". Other references to the existence of multiple classes of shares of an Arkansas savings and loan association may be found in Arkansas Statutes 67§822 (1963) and 67§1825 (1933).

Because the Arkansas statutes expressly give to an Arkansas chartered savings and loan all of the powers possessed by a corporation under the Arkansas Business Corporations Act, which powers include the power to create and issue a class of preferred capital stock, and because we find no express prohibition in Act 227 against the creation or issuance of such a class of preferred stock, we have concluded that Madison Guaranty's proposed capitalization plan is not inconsistent with Arkansas law. Should you require further information or assistance, please advise Hillary Rodham Clinton or Richard Massey of this firm.

Very truly yours,

Rose Law Firm

Rose Law Firm
 A Professional Association

RNM:mm

cc: Hon. Beverly Bassett

RLF1 03183

5000287

MADISON GUARANTY

THE QUAPAW QUARTER

P.O. Box 1583 • 16th & Main Street
Little Rock, Arkansas 72203 • 501-374-7777

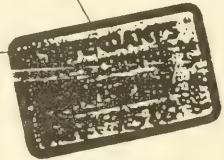
September 3, 1985

TO: Seth Ward
FROM: Jim McDougal
SUBJECT: Industrial Property

The following is a summary of our conversation of last Friday:

1. You will purchase all land north of 145th Street and the utility plants for \$1,150,000.
2. Madison will take an option for 270 days to purchase those properties for \$1,187,000, plus accrued interest on the loan you will make to purchase the property. If any tax consequences should arise for you from the transaction, Madison will pay those taxes.
3. You will have the present IDC manager collect the rent and utility payments and forward the net proceeds monthly to Greg Young here. Greg will then apply this income monthly to the accruing interest on your loan.
4. Madison will provide you with a letter requiring that you drive a prestigious automobile while you are in charge of this project.

JM/ss



SW1-004

S-INTR00028

532

LAW OFFICE OF
ROSE LAW FIRM
A PROFESSIONAL ASSOCIATION

126 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201
PHONE (501) 378-0131

CLIENT: 98202

WADISON GUARANTY SAVINGS/LOAN
14TH AND MAIN STREETS
LITTLE ROCK, AR 72202

SEPTEMBER 20, 1985
INVOICE # 7097

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #71-0488014) - RETURN THIS STUB WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED IN CONNECTION WITH:

MATTER: S

E.B.C.

02/04/85 T. THRASH
02/04/85 T. THRASH

05/07/85 T. THRASH

05/19/85 T. THRASH

05/19/85 T. THRASH

05/20/85 T. THRASH

REVIEW CONTRACT FOR SALE
TELEPHONE CONFERENCES WITH SETH WARD
AND CHARLIE COOK; MAKE CHANGES IN
DOCUMENTS
TELEPHONE CONFERENCE WITH CARYL COVER
REVIEW CHANGES IN AGREEMENTS
CORRESPONDENCE TO ALL PARTIES
TELEPHONE CONFERENCE WITH CARYL COVER
AND CHARLIE COOK
MEETING WITH SETH WARD, BOB WILSON AND
CHARLIE COOK; ATTEND BOB WILSON MEETING
PREPARE CORPORATE RESOLUTIONS
TELEPHONE CONFERENCE WITH SETH WARD

TOTAL FOR SERVICES: \$575.00

DISBURSEMENTS

PHOTOCOPY EXPENSE (.15)

15.30

DISBURSEMENTS TOTAL \$15.30

TOTAL THIS STATEMENT \$590.30

WIA

PAID 654.30
CK #
DATE 11-9-85

ROSE LAW FIRM

DKSN028979

BILLING MEMORANDUM—51491—01/31/85..... PAGE 1..... WILLARD CLINTON.....

98263 MADISON GUARANTY SAVINGS/LOAN
MR. JOHN LAIRMAN, PRESIDENT
16TH AND MAIN
LITTLE ROCK, AR 72201

4. GENERAL

DATE	TIME	MATTER	DESCRIPTION OF SERVICES RENDERED	15140
DEC 11/20/85	1.00		CONFERENCE WITH S. JAROSZ PURCHASE FROM BRICK LILL	304
MAR 12/20/85	1.00		CONFERENCE WITH S. JAROSZ CONFERENCE WITH W. HUBBELL	224
SAC 12/27/85	1.50		CONFERENCE WITH R. MASSEY REGARDING RESERVATION OF MADISON CAPITAL CORPORATION	7504
			AND FORM 80 TO FITZGUGH TRANSMITTING BLANK FORM 80 AND INSTRUCTIONS THEREOF	
			CONFERENCE WITH SECRETARY OF STATE RESERVING FOR PRELIMINARY BASIS STATE	
			NAME "MADISON CAPITAL CORPORATION" FOR RESERVATION OF CORPORATE NAME FOR PERIOD OF SIX	
			MONTHS (FEE OF \$5 FOR RESERVATION OF CORPORATE NAME FOR PERIOD OF SIX	
			MONTHS	

FEES TOTAL 4.00 \$72.50

DATE	TIME	CHECK	DISH	AMT	DESCRIPTION OF DISBURSEMENT	15140
FIRM 12/27/85		\$7846	5.00		RESERVATION OF CORPORATE NAME: MADISON CAPITAL CORPORATION	
SUMMARIZED CODE	5		3.25		PHOTOLOGY EXPENSE (1.15)	
DISH TOTAL				8.75		

TIME SUMMARY BY ATTORNEY

ATTORNEY	TIME	STANDARD VALUE	MATTER VALUE	AMOUNT TO BILL	S/NR	LAST	0118
16 SAC SHARON GRIMES	1.50	60.00	60.00	60.00	40.00	12/27/85	
43 SAC WILLARD CLINTON	2.50	312.50	312.50	312.50	125.00	12/20/85	8.75
9999 FIRM FIRM ATTORNEY	.00						
TOTAL FIRM	4.00	372.50	372.50	372.50	95.15		
TOTAL DISH			8.75	8.75	8.75		
			381.25	381.25			

DKSNO 29008

BILLING MEMORANDUM - 31680 - 01/21/86 - PAGE 1 - WILLIARD CLINTON

082623 HARBISON GUARANTY SAVINGS/LOAN
 MR. JOHN LAIMAR, PRESIDENT
 16TH AND MAIN
 LITTLE ROCK, AR 72201

1 STOCK OFFERING

DATE	TIME	MATTER	DESCRIPTION OF SERVICES RENDERED	4644
BHM 11/12/85	1-20	90.00	REVIEW AND REVISE OFFERING MATERIALS	4676
BHM 11/13/85	1-70	127.50	REVIEW OFFERING MATERIALS; CONFERENCE WITH S. HAWKINS	4682
BHM 11/14/85	1-10	87.50	CONFERENCE WITH B. KEMBERT, J. LUTWAC, REGARDING DEBT OFFERING	4688
BHM 11/15/85	1-10	125.00	CONFERENCE WITH S. HAWKINS, REGARDING DEBT OFFERING	7266
BHM 11/16/85	1-40	162.50	CONFERENCE WITH S. HAWKINS; CONFERENCE WITH M. MURPHY	5418
BHM 12/02/85	1-30	60.00	REVISE MEMORANDUM; CONFERENCE WITH S. HAWKINS; CONFERENCE WITH M. CLINTON; S. HAWKINS	8192
BHM 12/05/85	1-40	152.50	CONFERENCE WITH D. FITZTHUM; S. HAWKINS; RESEARCH PHLB REGS	8312
BHM 12/08/85	1-10	120.00	REVISE MEMORANDUM; RESEARCH PHLB DEBT REGULATIONS	8318
BHM 12/13/85	1-40	90.00	RESEARCH PHLB REGS REGARDING DEBT OFFERINGS	
BHM 12/17/85	1-20	1077.50	DRAFTING / REVISE LETTER TO HARBISON	
FEES TOTAL	13-70	1077.50		

TOTAL UNAPPLIED CASH

(7859.36)

NET FEES INVESTMENT

(6281.86)

CREDIT FOR DISBURSEMENT

11618

CREDIT FOR OVERSIGHT OF DISBURSEMENTS FOR ESTIMATED EXPENSES TO CLOSE

LD TELEPHONE CHARGES (INTERSTATE)

PHOTOGRAPH EXPENSE (.15)

ESTATE

90

13.00

90.00

131.50

131.50

131.50

131.50

131.50

131.50

131.50

131.50

131.50

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131.50

131.50

131.50

TIME SUMMARY BY ATTORNEY

ATTORNEY	DATE	TIME	STANDARD VALUE	MATTER	AMOUNT TO BILL	DATE	LAST	DATE
11 BHM	11/12/85	1-20	90.00	REVIEW AND REVISE OFFERING MATERIALS	90.00	12/17/85	12/17/85	12/17/85
43 BHM	11/13/85	1-70	127.50	REVIEW OFFERING MATERIALS; CONFERENCE WITH S. HAWKINS	127.50	12/17/85	12/17/85	12/17/85
9999 FIRM	11/14/85	1-10	87.50	CONFERENCE WITH B. KEMBERT, J. LUTWAC, REGARDING DEBT OFFERING	87.50	12/17/85	12/17/85	12/17/85
9999 FIRM	11/15/85	1-10	125.00	CONFERENCE WITH S. HAWKINS, REGARDING DEBT OFFERING	125.00	12/17/85	12/17/85	12/17/85
9999 FIRM	11/16/85	1-40	162.50	CONFERENCE WITH S. HAWKINS; CONFERENCE WITH M. MURPHY	162.50	12/17/85	12/17/85	12/17/85
9999 FIRM	12/02/85	1-30	60.00	REVISE MEMORANDUM; CONFERENCE WITH S. HAWKINS; CONFERENCE WITH M. CLINTON; S. HAWKINS	60.00	12/17/85	12/17/85	12/17/85
9999 FIRM	12/05/85	1-40	152.50	CONFERENCE WITH D. FITZTHUM; S. HAWKINS; RESEARCH PHLB REGS	152.50	12/17/85	12/17/85	12/17/85
9999 FIRM	12/08/85	1-10	120.00	REVISE MEMORANDUM; RESEARCH PHLB DEBT REGULATIONS	120.00	12/17/85	12/17/85	12/17/85
9999 FIRM	12/13/85	1-40	90.00	RESEARCH PHLB REGS REGARDING DEBT OFFERINGS	90.00	12/17/85	12/17/85	12/17/85
9999 FIRM	12/17/85	1-20	1077.50	DRAFTING / REVISE LETTER TO HARBISON	1077.50	12/17/85	12/17/85	12/17/85
TOTAL FEES					807.50			
TOTAL B158					807.50			

DKSN020002

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, JANUARY 23, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 2:15 p.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Mr. Lyon, would you stand for the purpose of taking the oath. [Whereupon, William C. Lyon was called as a witness and, having first been duly sworn, was examined and testified as follows:]

The CHAIRMAN. Thank you, Mr. Lyon.

We will take any statement that you want to make.

SWORN TESTIMONY OF WILLIAM C. LYON FORMER MEMBER, ARKANSAS STATE BANK BOARD

Mr. LYON. Senator, I do not wish to make a statement.

The CHAIRMAN. I have a statement that I'm going to make, then.

Last Thursday, the Committee heard testimony from Carolyn Huber, Special Assistant to the President, about Ms. Huber's discovery of the Rose Law Firm billing records in the Book Room of the President and Mrs. Clinton's private residence at the White House.

Ms. Huber's testimony raised some very serious questions that this Committee will examine in the coming weeks. Ms. Huber testified that she found these billing records on the table in the center of the Book Room at the White House residence and that the records were in plain view.

Ms. Huber also testified that access to the Book Room is limited to the President, Mrs. Clinton, the Clinton's overnight guests, Ms. Huber, Patricia Marshall, the First Lady's personal assistant, and a number of maids and butlers.

Perhaps even more troubling, Ms. Huber testified that the records were not in the Book Room just days prior to their initial discovery in August of 1995. It is important to remember that this Committee was conducting Whitewater hearings in August 1995.

Did someone leave these records out in the Book Room? Were the records left out intentionally or inadvertently?

These Rose Law Firm billing records are very important. They document the nature and the extent of Mrs. Clinton's legal work for the Madison Guaranty S&L during 1985 and 1986. Madison is the corrupt S&L at the center of the Whitewater matter. This S&L was owned by Jim McDougal, the Clintons' business partner in the Whitewater real estate project.

This Committee will now look into who obtained these billing records from the Rose Law Firm during the 1992 Presidential campaign, why were the records obtained, and who saw these records. The Committee will try to follow the chain of custody of these billing records to Washington, who brought the billing records from Arkansas to Washington, where the records stored, and where were they stored?

These records were subpoenaed by the Independent Counsel, the RTC, and this Committee. These records have been sought by investigators for 2 years. Why were the records not turned over sooner? Were they hidden at the White House? We will investigate whether anyone defied this Committee's subpoena. The American people have a right to know.

The Committee will depose Ms. Marshall and others who had access to the Book Room in August 1995. We will also depose the lawyers involved in the search for these records. The White House has also promised to provide the Committee with a log of visitors to the third floor of the White House during the early part of August 1995.

I'm particularly troubled by the fact that the records contain the handwritten notes of former White House Deputy Counsel Vincent Foster. These notes appear to be written to Mrs. Clinton. One note from Foster, for example, reads: "HRC, I believe there was a subsequent bill."

This Committee will try to find out if these records were taken from Mr. Foster's office on the night of his death. As the Committee will recall, Secret Service Officer Henry O'Neal testified that on the night of Mr. Foster's death, he saw Mrs. Clinton's Chief of Staff, Margaret Williams, remove file folders from the Foster office.

The Committee is now moving into the Arkansas phase of the Committee's public hearings. The vast majority of the matters that we have examined so far have involved events that occurred after January 20, 1993, when Bill Clinton took office as President. There are also serious questions regarding events that occurred in Arkansas in the 1980's when Bill Clinton was Governor.

Senate Resolution 120 authorizes the Committee to examine these matters. The Committee will examine the operations of Madison S&L. The failure of Madison cost taxpayers \$60 million. We'll try to find out if Jim McDougal, the Clintons' Whitewater partner, improperly diverted Madison funds to himself and others? Did any of this money find its way into the Whitewater real estate project in which the McDougals and the Clintons were partners? Did the Clintons know that McDougal misused Madison funds?

The Clintons and McDougals were supposed to be 50/50 partners in Whitewater. That means that the Clintons and the McDougals were supposed to share equally in any profits or losses. But we now

know that the McDougals put far more money into Whitewater than the Clintons. In fact, until mid-1986, the McDougals put more than \$158,000 into Whitewater while the Clintons only put, at most, \$35,000 into this supposedly 50/50 investment.

This Committee will investigate whether Governor Clinton provided any special benefits to Jim McDougal or Madison. Did Jim McDougal obtain improper influence with the Governor or his administration? What did McDougal give the Clintons and what did he get in return? These are important questions and the American people have a right to know the answers.

In the coming weeks, we will also examine the Rose Law Firm's representation of both Madison and the RTC. Senior partners at the Rose Law Firm included Hillary Rodham Clinton, Webster Hubbell, and Vincent Foster.

We now know from the Rose billing records that the Rose Firm was extensively involved in a Madison real estate project called Castle Grande. The Castle Grande project ultimately cost the American taxpayers almost \$4 million.

Mrs. Clinton billed Madison for more than a dozen conferences with Mr. Seth Ward, the Madison employee who was the straw purchaser of part of the land for this project. Mr. Ward is Mr. Webster Hubbell's father-in-law. Bank regulators have described this transaction involving Mr. Ward as a sham purchase that was structured to evade regulations limiting how much Madison could invest in real estate.

Last Thursday, Ronald Clark, the Chief Operating Officer of the Rose Firm, testified that the billing records indicated that Mrs. Clinton performed 14½ hours of unexplained work on Castle Grande in addition to over 7 hours of work that was described in the records. In total, Mrs. Clinton apparently billed Madison for more than 21 hours of work on Castle Grande.

Hillary Clinton billed more time to the Castle Grande project than any other lawyer at the law firm. This Committee will examine what legal work Mrs. Clinton performed on the Castle Grande project. What did she know, if anything, about the sham nature of the deal.

As we go forward, the Committee will also investigate Capital Management Services and its President, David Hale, a former Arkansas Judge. Hale has publicly charged that Governor Clinton pressured him to make a small business loan of \$300,000 that was used in part to prop up Whitewater. Did this happen?

This Committee is committed to completing this investigation as promptly as possible. We have been slowed by disputes with the White House and other parties over the production of documents. We have seen, in the past month, the mysterious discovery of the Rose billing records in the White House residence. We expect and deserve more cooperation going forward.

Finally, I wish to pledge to the Members of this Committee on both sides of the aisle that we will conduct this inquiry in a fair, even-handed, and impartial manner. That is what the American people want, expect, and deserve.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I would just make a couple of brief observations.

Conducting the hearing in a fair, even-handed, and impartial manner requires getting the facts first and making the judgments later. It requires not taking allegations and putting them forward as having been established and then having hearings and receiving factual testimony that disproves the allegations or shows there's no substance for making them. I have consistently asserted that that's essential to the work of this Committee, and I regret that it has been departed from and increasingly seems to be departed from.

So I think it is very important that we move into the Arkansas phase having essentially or substantially completed both the Foster paper phase and the Washington phase of this inquiry, that we keep that in mind. Otherwise, I don't think that the hearings will be seen as valid and I think a growing sentiment will develop in the country that this is a political exercise. I, for one, would not like to see that take place. But I am increasingly concerned that that is, in effect, what will transpire. I think it is very important for the Committee to move with vigor and expedition in conducting these inquiries.

The Iran-Contra Committee completed its hearings within 7 months after it was established, and in the last month, it held 21 hearings in a 1-month period.

This Committee has, on occasion, conducted itself at that pace, rather than at a more leisurely pace, and I think it imperative that the Committee undertake to do that, particularly in view of the fact, as I understand it, that the Senate is not going to be in session for voting virtually through the month of February which, of course, would mean Members would not have to compete with other legislative requirements. We would be in a position to move expeditiously with respect to the work of this Committee. I think it is imperative that we do so.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. LYON, I understand that you had some difficulty getting here from Little Rock, and I appreciate the fact that you were able to make it notwithstanding I guess the weather problem for the airplanes.

Mr. LYON. Yes, sir, we had difficulty. I would appreciate it if they have any more statements of length that they allow me to get my attorney off the timeclock first.

[Laughter.]

Mr. CHERTOFF. We're going to go right to the questions.

I ask you, Mr. Lyon, to move the microphone a little bit closer so that we can hear you.

Mr. Lyon, what is your business background, your profession?

Mr. LYON. I am the manager of a small manufacturing plant for a large company; I am also the Mayor of Fordyce, Arkansas; and, I also own a small lumber or plywood yard.

Mr. CHERTOFF. Back in the late 1970's and early 1980's, did you come to know a man by the name of James McDougal?

Mr. LYON. I knew James McDougal back between 1954 and 1958 at the University of Arkansas at Fayetteville.

Mr. CHERTOFF. In the early 1970's and early 1980's, did you have business dealings with Mr. McDougal?

Mr. LYON. In the 1970's, I would not think so. In the 1980's, yes.

Mr. CHERTOFF. What were those business dealings?

Mr. LYON. The business dealings were that, number one, he was a real estate developer. He had a place named Maple Creek, attempted to log Maple Creek or cut the timber. Castle Grande did cut the timber, selectively cutting there, also banked at Madison Guaranty. And other than that, I really can't think of any business dealings that I really had with him. I was offered a great many.

Mr. CHERTOFF. Let me ask you, in the 1980's, did you get appointed to the Arkansas State Bank Board?

Mr. LYON. Yes, sir, I did.

Mr. CHERTOFF. How did that come about?

Mr. LYON. Mr. McDougal called me, literally out of the blue, and asked if I would be on the Arkansas State Bank Board. I owned, well, the smallest bank in Arkansas and I said yes.

Mr. CHERTOFF. Was he then in the Governor's office as a staff person?

Mr. LYON. He was the top aide of Governor Clinton.

Mr. CHERTOFF. Can you describe for us what the Arkansas State Bank Board does? What it was back in the 1980's?

Mr. LYON. The Arkansas State Bank Board basically advises the Bank Commissioner. They vote on various branches. Some regulations I believe that the Bank Commissioner brings up. I have seen them, in all honesty, argue all day when two banks get into it in the same town, about if a bank was 3 feet too close to the other bank. You get into those kind of things on commissions. But basically they advise the Bank Commissioner, they are an arm of the Bank Commissioner.

Mr. CHERTOFF. When Mr. McDougal called to offer you this position, did you get appointed?

Mr. LYON. Yes, sir.

Mr. CHERTOFF. Before you actually got the appointment, did you talk to Governor Clinton at all?

Mr. LYON. No, sir.

Mr. CHERTOFF. So the only person you spoke to about getting the appointment was Mr. McDougal?

Mr. LYON. Yes, sir.

Mr. CHERTOFF. Am I right that you served during Governor Clinton's first term, then through Governor White's term, and then into Governor Clinton's second term?

Mr. LYON. I believe that's correct, yes.

Mr. CHERTOFF. Did you serve out the full second term of Governor Clinton?

Mr. LYON. No, sir.

Mr. CHERTOFF. How did you come to leave the Bank Board?

Mr. LYON. Governor Clinton asked me to resign.

Mr. CHERTOFF. Tell us what were the conversations that led up to Governor Clinton asking you to resign?

Mr. LYON. With Governor Clinton?

Mr. CHERTOFF. First with Mr. McDougal.

Mr. LYON. With Mr. McDougal?

Mr. CHERTOFF. Yes.

Mr. LYON. Mr. McDougal came over to a place of business that I owned. Now this is a long time ago.

Mr. CHERTOFF. Let me just help you with the dates. This is during Governor Clinton's second term so it would be some time in 1983 or 1984, right?

Mr. LYON. That would be correct.

Mr. CHERTOFF. So in this period of time, tell us about Mr. McDougal, what happened?

Mr. LYON. He implied, when he said we want you to resign from the Bank Board and go on some savings and loan board, that Mrs. Clinton was handling the deal, that he didn't think that he would have any trouble on his stock offering, and he said Bill wants to make sure that we get it through.

Mr. CHERTOFF. Who did you understand Bill to be?

Mr. LYON. Sir?

Mr. CHERTOFF. You mentioned Bill, whom did you understand Bill to be?

Mr. LYON. That would have been the President of the United States, Bill Clinton.

Mr. CHERTOFF. Then the Governor?

Mr. LYON. Then the Governor.

Mr. CHERTOFF. Can you take us back, just so we understand step-by-step. Mr. McDougal met you, he came to the bank or met you some place?

Mr. LYON. He met me at the brewery.

Mr. CHERTOFF. That's a brewery that you operate?

Mr. LYON. Right.

Mr. CHERTOFF. What did he tell you about his stock deal involving Madison Guaranty Savings & Loan?

Mr. LYON. Jim McDougal had a stock deal in order to raise capital for his savings and loan, which was Madison Guaranty. In talking to him before this, my understanding was that Mrs. Clinton was doing the work for him, the legal work, and that they had to get it through in a hurry because the bank was really out of capital. And capital is simply stored bonds which supports a bank, and you have to have them in a savings and loan, and it was growing too fast.

I'm not answering your question. Repeat it.

Mr. CHERTOFF. You were starting to answer the question. Mr. McDougal told you that he had some need to raise money for the bank by issuing stock.

Mr. LYON. Right. It was a preferred stock issue. But the funny thing to me about the whole thing is, as I remember it, and I don't remember too much about it, it seemed that it was a preferred stock issue, but that he would still maintain absolute control of the bank or ownership.

Mr. CHERTOFF. So what he wanted to do was issue stock so that he would get money in from investors, but he would have control of the bank, he would still have the voting control?

Mr. LYON. As I understood it.

Mr. CHERTOFF. Now, Mr. McDougal also explained to you that he had Mrs. Clinton involved in some way, or some relationship with Mrs. Clinton involving this plan of his?

Mr. LYON. He explained to me, several times, that Mrs. Clinton was on retainer through Madison Guaranty.

Mr. CHERTOFF. What did he ask you, in particular, to do in connection with this interest he had in issuing stock?

Mr. LYON. He expected me to go on whatever board it was and to help or to assist them in getting the stock issue through the Commission.

Mr. CHERTOFF. Would that have been the Arkansas Savings & Loan or Arkansas Securities Commission, the Savings and Loan Board?

Mr. LYON. I do not know, but I would think that it would be the State Savings and Loan Board, not the Securities Commission.

Mr. CHERTOFF. Was it your understanding that Mr. McDougal wanted you to go on that board, the Savings and Loan Board, from the Bank Board, for the specific purpose of voting to approve his issuance of preferred stock?

Mr. LYON. Yes.

Mr. CHERTOFF. What did you say to him when he asked you to do that?

Mr. LYON. I told him not "no," but "hell no."

Mr. CHERTOFF. Why did you tell him "hell no"?

Mr. LYON. Not that I'm all that honorable.

[Laughter.]

It made me mad that he would think that I would vote the way that he told me to. At that time, I was a banker, and bankers and people that run savings and loans really do not like each other. It's a different field entirely. And last is the stock issue itself just didn't sound kosher, didn't sound right.

Mr. CHERTOFF. What didn't sound right about it?

Mr. LYON. What didn't sound right about it was the fact, you know, you bought stock, what did you get? He still, according to what I knew, controlled the bonds completely and had control of Madison Guaranty completely. The common stockholders that would have been there, they could have been cut out entirely dividend-wise.

Mr. CHERTOFF. So one of the problems you saw with this was that it would hurt the regular stockholders of the bank, the people who would get the stock, because they wouldn't have control over what the savings and loan did?

Mr. LYON. That was one of the problems with that. But in all honesty, the reason that I answered like I did was the fact that he thought that I would do his bidding.

Mr. CHERTOFF. When you told Mr. McDougal that you would not agree to do what he wanted, you would not transfer from the Bank Board to the Savings and Loan Board, what did he say to you?

Mr. LYON. He asked me to resign.

Mr. CHERTOFF. From the Bank Board?

Mr. LYON. Right.

Mr. CHERTOFF. Did he tell you why he wanted you to resign from the Bank Board?

Mr. LYON. I told him, you know, it surprised me, and I said, "Jim, you can't ask me to resign. You're not with the State anymore." And he said, "Well, I'll have Bill ask you to resign." I said,

"Well, he's the Governor, and if he asks me to resign, I will resign." I honestly didn't believe that it would ever happen.

Mr. CHERTOFF. What happened?

Mr. LYON. He called and asked me to resign.

Mr. CHERTOFF. When you say he called and asked you to resign, you mean the Governor called and asked you to resign?

Mr. LYON. Correct.

Mr. CHERTOFF. About how long after your conversation with Mr. McDougal did it take for the Governor to call and ask for your resignation?

Mr. LYON. Within 2 months.

Mr. CHERTOFF. What did the Governor say to you when he called you up and asked for your resignation?

Mr. LYON. He thanked me for the fine and honorable work I had done for the State of Arkansas. He was as nice a man and a gentleman as you have ever talked to. I tried to be a gentleman too.

Mr. CHERTOFF. Mr. Lyon, in the conversation you had with Governor Clinton, when he asked you to resign, did he mention Jim McDougal?

Mr. LYON. Yes.

Mr. CHERTOFF. What did he say about Jim McDougal?

Mr. LYON. He started by saying that Jim told me that if I asked you to resign, that you would resign, I really do need the appointment. He did not say why, I did not ask why.

Mr. CHERTOFF. In this conversation with Governor Clinton, after he mentioned to you that he had spoken to Jim about your resignation, he asked you to resign and you agreed?

Mr. LYON. Yes.

Mr. CHERTOFF. Now, I want to go back to the conversation you had with Mr. McDougal when he first approached you about going over to the Savings and Loan Board to vote on the issuance of preferred stock for Madison Guaranty Savings & Loan. You said earlier in your testimony that he not only mentioned Mrs. Clinton as being on retainer for him, but he also mentioned Bill, meaning Governor Clinton, in that conversation. What did he say to you about Governor Clinton in that conversation?

Mr. LYON. He told me that a gentleman from Augusta, Arkansas, had given him a large contribution, and he mentioned the amount, and the amount was \$50,000, and he needed to appoint him to the Bank Board. In all honesty, I didn't necessarily believe that. I was taking everything with a grain of salt. It may have happened, it may not have. I did not know who he appointed to the Bank Board.

Mr. CHERTOFF. This is what McDougal told you in connection with who your replacement was going to be on the Bank Board?

Mr. LYON. Yes.

Mr. CHERTOFF. When Mr. McDougal first came to you and indicated to you that he wanted to have you switch over to the Savings and Loan Board, you said no. And then he said well, in that case, you are going to have to resign. You indicated you really didn't expect that the Governor would call you up and ask you to resign?

Mr. LYON. Not in my wildest dreams, really.

Mr. CHERTOFF. What was your reaction when you got the call?

Mr. LYON. I was disappointed, a little bit hacked, mainly it disturbed me.

Mr. CHERTOFF. What disturbed you?

Mr. LYON. That it was the Governor of the State of Arkansas. And I'm not sure why he asked me to resign.

Understand, I never saw Governor Clinton or Bill Clinton and Jim McDougal ever talk. I'm just telling you what happened. But it disturbed me that it probably did happen the way that Jim McDougal said that it was going to.

Mr. CHERTOFF. I'm going to ask that we put up on the overhead a document marked DKSJ 13314. It's a 2-page document from the Governor's office and it's undated. It's to a Jane, and it says, "Re: November/December Appointments." I would like to go to the second page, there's a list of items on it. The second page also has the number "5" circled, and it's written there, "Banking Board—ask McDougal."

I know you have never seen this document before, Mr. Lyon. I'm not putting this up for the benefit of the Committee to see that we have a document in the file in the Governor's office that does corroborate and confirm Mr. Lyon's impression of Mr. McDougal's relationship and abilities with respect to the Banking Board. I would like to ask you, Mr. Lyon, to focus your attention to the period you were on the Bank Board. Were you familiar with a bank known as the Bank of Kingston?

Mr. LYON. With a bank known as the Bank of Kingston?

Mr. CHERTOFF. Yes, a bank owned by Mr. McDougal.

Mr. LYON. Yes.

Mr. CHERTOFF. What did you know the name of that bank to be? Not the Madison Guaranty Savings & Loan, now, I'm talking about the bank?

Mr. LYON. The Bank of Kingston?

Mr. CHERTOFF. Yes.

Mr. LYON. Yes, sir.

Mr. CHERTOFF. You also know at some time that bank was renamed Madison Bank and Trust?

Mr. LYON. Yes.

Mr. CHERTOFF. When you were on the State Bank Board, did you come to learn that there were some problems with some of the loans being made at McDougal's bank, the Bank of Kingston, about a Cease and Desist Order?

Mr. LYON. May I go back, briefly?

Mr. CHERTOFF. Sure.

Mr. LYON. Well, after I was appointed to the Bank Board, Mr. McDougal called me and said that he had an opportunity to buy the Bank of Kingston, which was in the northwest part of the State, and did I think that he would do all right in banking. I told him, yes, I thought he'd do real well. Which means I'll never be a consultant, I guess, the way things have turned out.

Mr. CHERTOFF. I don't know, maybe you will be.

Mr. LYON. Right.

At that time, or some time right after that—it was in Madison County, that's where the bank or the Madison name came from—I do remember vaguely that that was the name of the bank, but I think of it as the Bank of Kingston.

Mr. CHERTOFF. Did you learn, while you were at the Bank Board, that there was a Cease and Desist Order that went out against that bank, the Bank of Kingston?

Mr. LYON. Right. The reason I went back a little bit, at the Bank Board, after he called me and I realized they had bought it, I asked someone either on the Bank Board or one of the examiners or someone, right before the meeting, how they were doing? He told me, do you know that they're under a Cease and Desist Order, and I told him, no, I did not, and asked why; and he told me why. So I did know of it, but not very much. I have never seen a Cease and Desist Order.

Mr. CHERTOFF. What did you get told about why Mr. McDougal's bank was under a Cease and Desist Order?

Mr. LYON. My understanding was unsecured loans, out-of-territory loans, and really too many politicians.

Mr. CHERTOFF. What do you mean by an out-of-territory loan?

Mr. LYON. An out-of-territory loan, you might say that it's illegal according to bank policy or laws. They draw a circle and within that circle you are supposed to make any loans; not outside the circle. There are instances that are forgiven, and I think it's more of a policy than anything, but when they draw that circle they pretty much stay with it and some of those loans were way out of the territory of a small bank.

Mr. CHERTOFF. Now in describing some of these improper loans and those out-of-territory or too many unsecured loans, you indicated that a large number of loans were going to politicians. Was there anybody in particular, or any individuals in particular whose names you heard as being people who received these kinds of loans?

Mr. LYON. Bill Clinton, Jim Guy Tucker, and Senator Fulbright.

Mr. CHERTOFF. I am going to ask that we put up on the Elmo now what has been marked as Bates number VCH367 through 373, which is a copy of a notice of charges and of hearing, of the FDIC against Madison Bank and Trust.

In particular, on the second page, I'd like to refer the Committee to paragraph b. This is a list of essentially charges of unsafe and unsound banking practices by that bank. They describe, for example, an excessive and disproportionately large volume of loans to borrowers residing or conducting business outside of its defined trade area, many of which have been granted without protective collateral, are lacking in supporting technical documentation, and some of which represent poor credit risks. Is that your understanding of what you have been referring to as "out-of-territory loans"?

Mr. LYON. Yes, sir.

Mr. CHERTOFF. Now, I would like to turn to VCH371 and put it up on the Elmo. Mr. Lyon, you should have a copy of this that we put before you if you care to look at it. It's also up on the screen.

It lists, as another element of concern, that the bank has extended credit to affiliated organizations—Flowerwood Farms, Great Southern Land Company, Kings River Land Company, Madison Guaranty Savings & Loan Association, Madison Properties, Park Place, and Whitewater Development Company, which do not meet collateral requirements and/or exceed the limitations provided by the applicable law.

Let me ask you, Mr. Lyon, had you ever heard of Whitewater in particular in connection with the regulatory Cease and Desist Order at Madison Bank and Trust?

Mr. LYON. No.

Mr. CHERTOFF. I would also like to direct the Committee's attention in the record to a document which is a June 5, 1984 document received from the State Bank Department. I don't believe it has a Bates number. It is a June 1984 progress report. It is addressed to Marlin Jackson who I guess was the State Bank Commissioner during part of the time you were at the Bank Board?

Mr. LYON. Mr. Marlin Jackson was the State Bank Commissioner part of the time.

Mr. CHERTOFF. This is a document that, of course, is after the Cease and Desist Order was in effect and it relates the progress of the bank in clearing out some of these loans that were adversely classified assets, loans to borrowers residing outside the bank's normal trade territory.

I would like to direct the Committee's attention to the first page of the attachment. There are several pages of loans. In particular, at page 15, there is a loan listed to Hillary Rodham of Little Rock, that is listed as of June 1984, as being paid off.

Senator SARBANES. What was the question that he was supposed to answer?

Mr. CHERTOFF. Have you seen this document before or any documents like it?

Mr. LYON. No.

Senator BOXER. Mr. Chairman, can we get a copy of these, because I can't see it on the machine. It's too small printing for me.

The CHAIRMAN. Certainly, I think we can provided the Minority with them, so if you would hand them out to the Members.

Senator BOXER. Great.

Senator MURKOWSKI. Do we have them on this side?

Mr. CHERTOFF. I'll make sure everybody has a copy.

The CHAIRMAN. That's page 15.

Mr. CHERTOFF. Now, Mr. Lyon, I would like to direct your attention to something else in the time I have left for this opening examination. You mentioned that Mr. Jackson served as Commissioner during the period of time that you served on the Bank Board. You left the Bank Board during Mr. Clinton's second term, correct?

Mr. LYON. Yes, sir.

Mr. CHERTOFF. Mr. Jackson continued on after you had left?

Mr. LYON. Yes.

Mr. CHERTOFF. I'd like to show you a letter we received, DKS N 28363. It is a letter that was written after you had left the Bank Board. I want to make it clear to you so this is not something you would have seen at the time but I want to ask you, based on your experience at the Bank Board, for your opinion about this.

We will wait a moment to put it up on the Elmo and make sure everybody has a copy. It is a letter of November 1, 1985 to Charles Campbell, Vice President, Security Bank of Paragoula, Arkansas. Re: Note No. 957-585—Bill Clinton. Note balance—\$18,800.00; Accrued interest—\$2,322.42. I want to make sure the witness has a copy of this, do you have a copy of the letter?

Mr. LYON. Yes, sir, I do.

Mr. CHERTOFF. I want to read the letter and I want to ask you something about this. It says:

Dear Charles,

I am enclosing the Extension Agreement which Governor Bill Clinton signed yesterday.

It is my understanding that Jim McDougal, a close friend as well as business associate of Governor Clinton, is to forward to you a check for \$2,322.42 representing the interest due on the note.

In discussing this matter with Jim today vis-à-vis telephone, he indicated that he intended to make a \$4,000 or \$5,000 principal reduction in addition to the interest payment.

After making the appropriate approval of the Extension Agreement, please return the appropriate copy to me, and I will personally deliver it to Governor Clinton. Also, please return copies of the receipt to me.

So that Jim McDougal may know that the proper credit has been given, please provide Jim with a copy of the receipt for the payment of the interest and principal along with a copy of the Extension Agreement.

I trust this meets with your approval and that it will soon remove the note from the past due list.

Sincerely, Marlin D. Jackson, Bank Commissioner.

cc: Jim McDougal.

It is on the letterhead of the Arkansas State Bank Department.

Now, am I correct that the Arkansas State Bank Department was the regulator for banks, as opposed to savings and loans?

Mr. LYON. Yes.

Mr. CHERTOFF. In your experience, or in your opinion, based on your service on the Bank Board, was it proper for an official of the State Bank Department, especially the Commissioner on official stationery in his official capacity, to be writing to a bank that he regulates and to be soliciting that bank to extend a personal loan agreement to an individual?

Mr. LYON. Marlin Jackson is a very good friend of mine, and the answer is no.

The CHAIRMAN. You say he is a very good friend and the answer is no?

Mr. LYON. When I say, no, I mean it was not right for him to do that. He should never have done this.

Mr. CHERTOFF. He should never have done this.

I think this is probably a good place for me to stop.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Do you know whether Marlin Jackson had any connection with the Security Bank of Paragoula?

Mr. LYON. My understanding was that he owned the Security Bank. When I say owned—the majority of the stock of some bank in Paragoula, I am not sure it was the Security Bank. And that when he became Bank Commissioner, he put it in a trust where he wouldn't have anything to do with it or have any say so. It was my understanding, but I don't know what bank he owned.

Senator SARBANES. But you think it's this bank?

Mr. LYON. Not necessarily, no, sir. I do not know what bank he owned.

Senator SARBANES. We'll find out.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Lyon, good afternoon.

Your relationship with Mr. James McDougal in the early- to mid-1980's was one as borrower to lender in connection with Mr. McDougal's capacity at the Madison Bank. Is that correct?

Mr. LYON. I borrowed money from Madison Guaranty Bank. My relationship with him at that time was he was a friend.

Mr. BEN-VENISTE. And when did you first borrow the sum of \$100,000 from Madison Bank?

Mr. LYON. My guess is somewhere in the early 1980's.

Mr. BEN-VENISTE. That loan then grew, as time went on, did it not, to the point where you were well over \$300,000 in debt to the Madison Bank?

Mr. LYON. That's correct.

Mr. BEN-VENISTE. When was that time period roughly?

Mr. LYON. I guess around 1984, 1985, 1986.

Mr. BEN-VENISTE. So you can't be more precise as to whether it was 1984 or 1986?

Mr. LYON. Counselor, the loans kind of were paid and not paid and came and went. I can't be precise without the records that you have in front of you.

Mr. BEN-VENISTE. Do you remember when you paid them off?

Mr. LYON. No.

Mr. BEN-VENISTE. You did pay them off, did you not?

Mr. LYON. Every one of them.

Mr. BEN-VENISTE. But you don't remember which year that was?

Mr. LYON. No, but I certainly did do a lot of celebrating when I did do it.

Mr. BEN-VENISTE. I'm sure you did.

So that at least during the period of time that you have testified about here today, you were in the situation of owing Madison Bank quite a considerable sum of money?

Mr. LYON. Yes, I owed Madison Bank a considerable sum of money, right.

Mr. BEN-VENISTE. And those loans were in connection with your brewery business?

Mr. LYON. Yes.

Mr. BEN-VENISTE. You had established a brewing operation, sort of a micro-brewery operation in Arkansas?

Mr. LYON. I believe that's one of the best definitions that I ever heard, sort of a brewing operation. The beer wasn't all that good, if you don't mind me saying so.

Mr. BEN-VENISTE. Well, you know, everybody's a critic, and I guess you're the best critic of the product. So you were working on making better beer. It was costing you more and more money as time went on, and this loan grew almost four-fold?

Mr. LYON. Correct.

Mr. BEN-VENISTE. So you had reason to be nice to Mr. McDougal and sort of humor him from time-to-time?

Mr. LYON. Well, I didn't go around kicking him in the rear every day, right.

Mr. BEN-VENISTE. Your own personal view I take it, not expressed directly to Mr. McDougal at the time, was that Jim McDougal was a braggart?

Mr. LYON. Mr. McDougal is known to brag a little, yes.

Mr. BEN-VENISTE. You thought he was given to exaggeration, is that correct?

Mr. LYON. That's correct.

Mr. BEN-VENISTE. Indeed, I think in your own words, you felt that Mr. McDougal was grandiose?

Mr. LYON. No, I didn't feel it, I knew it.

Mr. BEN-VENISTE. You knew that he was grandiose?

Mr. LYON. Right.

Mr. BEN-VENISTE. In order to make sure I knew what you were talking about, Webster's helped me out with a definition of grandiose saying: Seeming or trying to seem very important, pompous, or showy. Would that be a fair characterization of what you meant when you characterized Mr. McDougal as grandiose?

Mr. LYON. Mr. McDougal, a man of great humor, a fine man most of the time that I was around him, was certainly that way at times, yes.

Mr. BEN-VENISTE. So that you would take what he told you, from time-to-time, with a grain of salt, having in mind your personal view of exaggeration, grandiosity, and braggadocio, fair to say?

Mr. LYON. Say that one more time.

[Laughter.]

Mr. BEN-VENISTE. You took what he said with a grain of salt?

Mr. LYON. Yes.

Mr. BEN-VENISTE. Is it correct, when you were removed from the Bank Board, you were not happy about that event?

Mr. LYON. No, I was not happy about it. I was very disappointed about it.

Mr. BEN-VENISTE. You were unhappy and you were bitter about the decision?

Mr. LYON. No, not really. Serving on the Bank Board had gotten a little bit old, to be off of the Bank Board didn't really matter to me one way or the other.

Mr. BEN-VENISTE. So that it was OK with you that you were off the Bank Board?

Mr. LYON. It wasn't necessarily OK with me, but it wasn't any big deal with me either.

Mr. BEN-VENISTE. Haven't you said that you were p.o'd big time, using your expression sort of abbreviated?

Mr. LYON. I don't believe I ever used that expression. I think I spelled it out.

Mr. BEN-VENISTE. I said I'd abbreviated it.

Mr. LYON. Right, OK.

Mr. BEN-VENISTE. I am having difficulty in accommodating both versions. You were either not unhappy or you were unhappy, which was it?

Mr. LYON. If you say that I was not unhappy or I was unhappy, then I would say in this case that I was unhappy; and you would be too if they kicked you off of where you are now.

Mr. BEN-VENISTE. Maybe not.

[Laughter.]

Mr. LYON. I can't help my feelings. You understand the way I felt about the Bank Board.

Mr. BEN-VENISTE. But I am trying to get it in your words since you said both things. I am trying to find out exactly, and this is

now serious, whether in fact you expressed that you were unhappy that you had been asked to leave the Bank Board and you did tender your resignation. But you say you weren't happy about it.

Mr. LYON. And I wasn't unhappy about it either.

Mr. BEN-VENISTE. I think we have taken that as far as I can go with that for now.

The timing that you have indicated of Mr. McDougal's phone call to you was, as you expressed it, a couple of months before the Governor asked you to tender your resignation. Is that correct?

Mr. LYON. No, that's not correct.

Mr. BEN-VENISTE. When did McDougal have that conversation with you in relation to the time that Governor Clinton called you?

Mr. LYON. Mr. McDougal came over to the brewery and we went outside on the porch and talked. There was no phone call.

Mr. BEN-VENISTE. I'm sorry.

Mr. LYON. He did that before. Go ahead.

Mr. BEN-VENISTE. When did this porch conversation take place in relation to the time that Governor Clinton asked you to tender your resignation?

Mr. LYON. Some time in 1983 or 1984, as best as I can tell you.

Mr. BEN-VENISTE. No, no. I am not asking you to pin down the date right now, but I am asking you in terms of the sequence of events, Mr. Lyon. You say that Mr. McDougal had a conversation with you. If I recollect your testimony, you said that he mentioned that he wanted you to resign from the Bank Board and then to go on the Savings and Loan Board because he wanted you to vote on the preferred stock issuance in a way favorable to him. That Mrs. Clinton had been retained and she was working on that project. And that you didn't say just "no," you said, "hell no." Am I fair in that characterization?

Mr. LYON. I said not "no," but "hell no."

Mr. BEN-VENISTE. That occurred how soon before you received a call from Governor Clinton asking you for your resignation?

Mr. LYON. We're going back probably 10 years.

Mr. BEN-VENISTE. I know it's a long, long, long time ago. That point has been made in this Committee.

Mr. LYON. My best estimate—and it is an estimate—is that after the conversation with Jim McDougal, Mr. Clinton called out of the blue, probably 2 months later.

Mr. BEN-VENISTE. That is where I started this question, thank you. Two months elapsed, more or less, before you were asked to tender your resignation, and then you tendered your resignation?

Mr. LYON. Correct. At least 2 months, I would say, or more.

Mr. BEN-VENISTE. You mentioned, in your testimony, that on several occasions, or repeatedly, Mr. McDougal said that Mrs. Clinton had been retained and was handling the matter, but that they wanted your vote on it as well. Clear in your mind?

Mr. LYON. Clear in my mind.

Mr. BEN-VENISTE. Now, the date that you resigned, and I think we can help you on that, could we put up DKS 026346, please? Can you read that?

Mr. LYON. No.

Mr. BEN-VENISTE. Let's get a copy down, please, for Mr. Lyon.

Mr. LYON. We don't have a copy of that, that's what we sent in.

Mr. BEN-VENISTE. The document that I'm referring to——
The CHAIRMAN. Could you furnish us with a copy?

Mr. BEN-VENISTE. Sure. We'll take a moment because it is very important.

Are you with me now, Mr. Lyon, on this document? It is a February 28, 1984 release from the Governor's office. In the second paragraph, it says: "Governor Bill Clinton's office today announced the following appointments: James Atkins of Little Rock, State Banking Board. Mr. Atkins replaces William C. Lyon of Fordyce, who resigned." Do you see that?

Mr. LYON. No, I do not.

Mr. BEN-VENISTE. You don't see that?

Mr. LYON. Mine says, "Announced the following appointments."

Senator SARBANES. The second one, Mr. Lyon, James Atkins.

Mr. LYON. OK.

Mr. BEN-VENISTE. Are you with me now? Mr. Atkins of Little Rock, State Banking Board. Atkins replaces William C. Lyon, that's you, of Fordyce, Arkansas, who resigned. OK?

You look puzzled, is this inconsistent with your recollection?

Mr. LYON. Yes.

Mr. BEN-VENISTE. What do you think, that this is not accurate?

Mr. LYON. James Atkins is a friend of mine and was on the State Bank Board at the same time that I was on the board.

Mr. BEN-VENISTE. That's right. He's not some \$50,000 contributor from Augusta.

Now, Mr. Lyon, Atkins resigned a month after that and he was replaced by Mr. Hobgood. Do you know who Mr. Hobgood is? Hello Mr. Lyon?

Mr. LYON. I'm looking for Mr. Hobgood?

Mr. BEN-VENISTE. Don't look for him on that document because Mr. Hobgood comes in a month later. Your counsel, I believe, is providing you with a document that shows that on April 3rd, Mr. Hobgood replaced Mr. Atkins who resigned. Mr. Hobgood had been on the board, had he not?

Mr. LYON. I don't know. I am trying to answer your question, Counselor. When you say Mr. Hobgood, I do not recollect a Mr. Hobgood. If I knew his first name, it might help.

Mr. BEN-VENISTE. Jim, it says here; could be James.

Mr. LYON. James Hobgood. Where is he from?

Mr. BEN-VENISTE. Arkadelphia. Is that near Augusta?

Mr. LYON. No. The man from Augusta was, I believe, Collins or Collier.

Mr. BEN-VENISTE. It's not Hobgood and it's not Atkins, correct?

Mr. LYON. Right.

Mr. BEN-VENISTE. Now more to the point, Mr. Lyon, the Rose Law Firm is not retained by the Madison Bank to do any work on the preferred stock deal until 1985, over a year after you have resigned, well over a year after you resigned.

Further, the officers of Madison Bank, including Mr. Latham, have provided testimony to the effect that the preferred stock proposition was not considered and was not researched until the spring of 1985, well over a year after you say you had your conversation with Mr. McDougal about that subject.

Now with respect to the concept of preferred stock, you indicated that your reaction to Mr. McDougal or your reaction personally, when you learned about this preferred stock proposition, was that this was some kind of a scam.

Mr. LYON. No. No. I am telling you that I don't know what the deal really was. I do not know what the deal was.

Mr. BEN-VENISTE. You're saying that you didn't understand it?

Mr. LYON. Preferred stock, I said I thought, but I didn't know. I do not know anything about the preferred stock, except that they get paid before the common stockholders. Now that's all I know.

Mr. BEN-VENISTE. It is your general feeling, because of this understanding of what happens with preferred stock, that maybe there was something wrong with the transaction?

Mr. LYON. Maybe.

Mr. BEN-VENISTE. But you have absolutely no reason——

Mr. LYON. But I'm telling you that I do not know.

Mr. BEN-VENISTE. You have no reason, as you sit here before us, no matter how your prior statements have been interpreted here today, to believe that the preferred stock offering was in some way improper or a scam or in some way untoward. Is that right?

Mr. LYON. That's right.

Mr. BEN-VENISTE. OK. The Cease and Desist Order that you were shown here earlier, did Mr. McDougal ever mention such a thing to you at any point when you were on the Bank Board?

Mr. LYON. No.

Mr. BEN-VENISTE. No one asked you to do anything improper or, for that matter, to look at that situation or to become involved in any way with that situation. Is that correct?

Mr. LYON. That's correct. The only thing that I know about the Cease and Desist was strictly a very minor conversation, probably 15 years ago, and I had nothing to do and know nothing about any Cease and Desist Order.

Mr. BEN-VENISTE. You were not happy with Governor Clinton when you were asked to leave the Bank Board. Is that fair to say?

Mr. LYON. That's fair to say. It's fair to say that I was not happy with Governor Clinton when I was asked to leave the Bank Board, but I wasn't all that unhappy either.

Mr. BEN-VENISTE. When did you, for the first time, make an allegation that Mr. McDougal had asked you to resign in conjunction with voting in some way, if you were to be appointed to the savings and loan?

Mr. LYON. Sir, I didn't make an allegation.

Mr. BEN-VENISTE. When did you first tell this story?

Mr. LYON. I told the truth when several members of whatever Gestapo you all have coming at me, asked me what I knew about Jim McDougal, and I told them everything that I knew.

Mr. BEN-VENISTE. We don't have a Gestapo here, I know you are trying to be funny, but that isn't too funny to me.

So I'm asking you again, when for the first time any place, Mr. Lyon, did you come forward with the story that you have told here today, about Mr. McDougal's request that you take particular action for Madison Bank?

Mr. LYON. I do not remember. It wasn't a story that I told.

Mr. BEN-VENISTE. Your version, your recollection.

Mr. LYON. My recollection, to me, it's the truth.

Mr. BEN-VENISTE. Did you ever tell it to the newspapers?

Mr. LYON. No.

Mr. BEN-VENISTE. Did you ever tell it to any investigators?

Mr. LYON. To investigators? Yes, sir.

Mr. BEN-VENISTE. Did you ever tell it to any investigators before this Senate Committee asked you about it?

Mr. LYON. Is this called the Senate Committee?

Mr. BEN-VENISTE. This is the Senate here, this building is the Senate.

Mr. LYON. I'm sure that I have, yes.

Mr. BEN-VENISTE. About how long ago?

Mr. LYON. I have no idea when this first came up, sir.

Mr. BEN-VENISTE. Did you ever testify under oath before you gave a deposition to this Committee about this subject?

Mr. LYON. I do not know the first time that I gave it, if I testified under oath. I'm simply stating what I recollect happened and how it happened at the time, and that's all.

Mr. BEN-VENISTE. You've also made a statement that McDougal enlisted your help in connection with some problem you were having with State regulators regarding your fledgling brewery business. Is that correct?

Mr. LYON. I do not remember asking Mr. Jim McDougal to help on that matter. However, I feel sure that I would have, and I did because I would have asked him to help me in that matter, yes.

Mr. BEN-VENISTE. If I understand what you're saying now, you have no recollection of having asked him to do anything. You have no recollection that he did anything but you feel kind of sure that you must have?

Mr. LYON. Sir, if you wish to testify, you're putting words into my mouth.

Senator SARBANES. What is your recollection, Mr. Lyon, on that subject?

Mr. LYON. On what subject?

Senator SARBANES. On Mr. McDougal helping you on the brewery matter.

Mr. LYON. What is my recollection?

Senator SARBANES. Yes, sir.

Mr. LYON. Immediately or when it actually happened?

Senator SARBANES. Either way.

Mr. LYON. My recollection is Jim McDougal and I used to drink coffee every once in awhile, when I banked at Madison Guaranty. He would invite me in for a cup of coffee. I feel sure that I told him about the problem, the brewery was floundering and I thought if I could sell the beer at the brewery along with food, which was not legal in Arkansas at that time, that we might make it.

I feel sure that I told Jim about it, I feel sure that I asked him to help me. I also honestly do not know when I asked him.

Senator SARBANES. But you do recall asking him to help you?

Mr. LYON. No, that's what I'm telling you. I don't recall asking Jim McDougal to help me. I'm telling you the truth. I know I would have, but it happened a long time ago.

The CHAIRMAN. Mr. Lyon, is it fair to say that you believe you probably did this?

Mr. LYON. Oh, sure.

The CHAIRMAN. Because he was your banker?

Mr. LYON. Not because he was my banker, necessarily, but I would have asked anybody to help.

The CHAIRMAN. But he was the banker as it related to this particular transaction, so you would have explained it to him?

Mr. LYON. Right.

The CHAIRMAN. OK.

Mr. BEN-VENISTE. So what year would this have been?

Mr. LYON. Oh, man, you know the years come and go.

Mr. BEN-VENISTE. Was it before or after he asked you to get off the Bank Board?

Mr. LYON. I feel sure that it was probably afterwards.

Mr. BEN-VENISTE. Afterwards?

Mr. LYON. Right.

Mr. BEN-VENISTE. So after you got upset about being asked to get off the Bank Board, then you continued to have a cozy relationship, a friendly relationship with Mr. McDougal?

Mr. LYON. Thank you, yes, I still bank there. I still owed the bank and Jim McDougal was still a friend of mine. As I told you, I was disappointed in being taken off the Bank Board, but in another way I really was not. And Jim McDougal was still my banker and my friend.

Senator SARBANES. He had been your friend in college too, is that right?

Mr. LYON. He was a friend in college to a certain extent. I didn't know him all that well, but, yes.

Mr. BEN-VENISTE. Now, I want to get to a question that was asked you at your deposition, which I did not attend, but I'm reading from page 41 at line 18, where you were asked this question by Majority Counsel:

Question: So you were attempting to get this bill passed through Senator Scott for the brewery that you owned in Little Rock, and at the same time, Mr. McDougal wanted you to invest in a brewery, move your brewery to Castle Grande, and so you were concerned about the restrictions on both places in terms of the manufacture of beer and the sale of it on premises, correct?

Answer: Yes, sir.

Do you see that?

Mr. LYON. I see that.

Mr. BEN-VENISTE. Do you have a little question now in your mind about whether you should have answered yes to that kind of a leading question?

Mr. LYON. Counselor, if there is one thing a very good attorney can do, he can put a little word in there that you wonder about.

Mr. BEN-VENISTE. Which little word troubles you that Majority Counsel put in?

Mr. LYON. On both.

The CHAIRMAN. Let's let Mr. Lyon answer the question, and if it's not answered satisfactorily, you will have an opportunity to ask again. You know, he is testifying to the best of his ability.

Go ahead, Mr. Lyon.

Mr. LYON. I don't really have any hesitation on that. I see what you're talking about on both places, but at the time, man, when your back's against the wall, you don't care if it's on all three places and there wasn't a third. You understand what I mean?

Mr. BEN-VENISTE. No, I don't. I can tell you that I'm completely puzzled by what you just said.

Mr. LYON. OK. If I could have gotten the regulation passed that we put the brewery in Maple Creek, or Fordyce, or Timbuktu, then I probably at that time would have done it.

The thing that I was trying to do, at the location that I was at, in Little Rock, Arkansas, was to get a regulation passed where I could sell and serve beer and food. Now it's legal, but at that time it was not legal.

Mr. BEN-VENISTE. Let me back up a couple of steps. First, the request that you had to serve food at your place of operation in Little Rock, that was turned down, you never got that through, right?

Mr. LYON. Never got that through.

Mr. BEN-VENISTE. Second, when you were asked this question, you said, at the same time that there was a bill that was put through on this issue, McDougal wanted you to move your brewery to Castle Grande. Do you see that?

Mr. LYON. No, but that's true.

Mr. BEN-VENISTE. I don't think it is true, and I don't think you're being careful with your testimony under oath, and this is why—

The CHAIRMAN. Counselor, I'm going to let you come back to this.

Mr. BEN-VENISTE. I'd like to finish it now, if I might.

The CHAIRMAN. If you're going to pursue this line, and finish it within a few minutes, we'll pursue this. Go ahead.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

The CHAIRMAN. I am going to ask you something. I think when you make your statement that he's not being truthful, I don't think that to date, there has not been anything I have seen that would indicate that Mr. Lyon has not been doing anything other than attempting to answer questions truthfully.

Mr. BEN-VENISTE. I haven't said there was anything deliberate, Mr. Chairman.

The CHAIRMAN. When you're saying untruthful, the clear characterization—let's ask the question. I am going to let you proceed, though you are over the time limit. Continue. We will end this particular line of questioning.

Mr. BEN-VENISTE. Mr. Lyon, do you know when it was that the bill was withdrawn that you referred to in this answer: "Senator Scott's bill"?

Mr. LYON. Counselor, I do not know when it was.

Mr. BEN-VENISTE. Let me see if I can help you.

Mr. LYON. Thank you.

Mr. BEN-VENISTE. According to the House report, page 11 on the subject, it says, "After referral to the State agency's Committee, the bill was withdrawn on February 18, 1985," OK? February 18th is the date that the bill was withdrawn.

Sir, the problem that I have in your answer is your reference to Mr. McDougal and Castle Grande, because, let me show you—this is the deed whereby Mr. McDougal and the Madison Bank buys the property that's called IDC from the Industrial Development Company. It is dated the 4th day of October, 1985, several months after the time that the bill that you referenced was withdrawn by the Arkansas legislature.

Now that my time is up, Mr. Chairman, I will certainly reserve further questioning for a later opportunity.

The CHAIRMAN. I'm not going to give into the temptation of asking so what?

Mr. BEN-VENISTE. I could explain so what, or I will let you do it if you would ask that.

The CHAIRMAN. I have to tell you—

Mr. Chertoff.

Mr. CHERTOFF. Let me go back.

In fairness to you, Mr. Lyon, let me help you clarify some of what just went on. You were shown a document marked DKSJN 26346. It is a press release indicating a number of appointments to the State Banking Board. You remember being asked about that a few minutes ago?

Mr. LYON. Yes.

Mr. CHERTOFF. Mr. Ben-Veniste, I guess, was trying to suggest you were wrong in your testimony about who replaced you, but I actually think you are right. Why don't we see if we can get at the facts here.

Your testimony in your deposition was that Mr. McDougal told you that you were going to be replaced by a man from Augusta named Collier or Collins, or something of that sort, who was a big campaign donor. That's what Mr. McDougal told you?

Mr. LYON. That's what he told me. I didn't know that as a fact, but that's what he told me.

Mr. CHERTOFF. If you look at the press release of February 28, 1984, I think that is exactly what it shows. It shows that you had your term. You resigned, which is, of course, what Mr. McDougal had told you that you would have to do, right?

Mr. LYON. Yes.

Mr. CHERTOFF. There was a Mr. Atkins who served with you on the board, right?

Mr. LYON. Right.

Mr. CHERTOFF. It seems what they did was they moved his term over to replace your term which would normally have expired at the end of 1984, which is the second paragraph. Then they made Mr. Collier from Augusta, which is the man you identified, they put him in then to substitute for Mr. Atkins who then had a longer term. So that what happened is exactly what you said happened. They moved the chairs over on the Bank Board. You resigned. They took Atkins out of the term that ended in 1988 and moved him over to fill your term out, which ended in 1984, and then they put Collier in to serve a full term to 1988.

I think you would agree with me that what is contained on this document you were shown is exactly what you said happened. The bottom line is Collier came in from Augusta and he was the new face on the board that replaced you, right? That's your memory, right? Your memory is that McDougal told you Collier was the guy who would come in to replace you from Augusta?

Mr. LYON. Collier or Collins, yes.

Mr. CHERTOFF. It turns out that your memory is correct in this respect.

I also want to clarify, Mr. Ben-Veniste had asked you some questions about whether Mrs. Clinton was retained by the bank, Madi-

son Bank, in 1983 or 1984, when you had this conversation with Mr. McDougal.

In fact, what the record reveals is that Madison had been a client of the Rose Law Firm—Madison Bank, not the savings and loan, the bank had been a client of the Rose Law Firm since at least 1982. In fact, I get this from Mrs. Clinton's own statements in the interviews she made to the Office of Inspector General of the RTC, which is at I believe the third page where Mrs. Clinton said she believed Madison then, as Madison National Bank, had been a client of the RLF since 1982, and that Vincent Foster had been the responsible attorney.

So again, your memory, which is that Mr. McDougal said that Mrs. Clinton was on retainer at the bank is essentially corroborated, confirmed by this document, that the firm had been on retainer not for Madison Guaranty Savings & Loan but for the bank.

You have come up here, you are testifying under oath. I want to be quite clear about this. This incident with respect to your removal from the Bank Board, and I'm going to try to lay out for you my understanding of what you've told us. I don't want to put words in your mouth. If you want to correct me or you want to change something, you tell me. I will tell you first what I understand your testimony is.

I understand you to have said that Mr. McDougal met with you at the brewery. You went outside to talk about this issue of the preferred stock. That Mr. McDougal said he wanted you to leave the Bank Board and go over to the Savings and Loan Board so that you would vote his way on the preferred stock issue. Do I have it right up to that point?

Mr. LYON. Yes.

Mr. CHERTOFF. Your answer to him was "hell no." Is that right?

Mr. LYON. Not "no," but "hell no."

Mr. CHERTOFF. You didn't want to do it because you were not comfortable with this preferred stock arrangement, right?

Mr. LYON. It wasn't really that. I don't know an awfully lot about that stock deal. I didn't want to do it simply because he seemed to think that he could control me or here, I'm going to snatch you over here, and put you there, and you vote this way.

Mr. CHERTOFF. You thought that was improper?

Mr. LYON. I'm an honorable man, you know.

Mr. CHERTOFF. And you understand that it is dishonorable for somebody who is in a public position to be voting out of a sense of obligation to somebody else. You are supposed to do what's in the public good, right?

Mr. LYON. That's right.

Mr. CHERTOFF. That's why you said, "hell no."

Mr. LYON. Yes.

Mr. CHERTOFF. When Mr. McDougal talked to you about the preferred stock, he told you, in this conversation, that he had Mrs. Clinton on retainer at the bank, right?

Mr. LYON. He told me, not necessarily about preferred stock. He told me that he had her on a retainer, and I believe he mentioned a figure, \$25,000 a year. And then later on, probably the preferred stock came up.

Mr. CHERTOFF. So the reference to Mrs. Clinton was not specifically with respect to the preferred stock issue, it was in general in describing——

Mr. LYON. A general discussion. He mentioned it, he seemed to be a little proud of it.

Mr. CHERTOFF. He also told you, I think you said, Bill had an interest or Bill wanted this to happen too?

Mr. LYON. Yes.

Mr. CHERTOFF. You understood Bill to be Bill Clinton?

Mr. LYON. I perceived that, yes.

Mr. CHERTOFF. When you said, "hell no" to Mr. McDougal, he then told you that you would have to resign from the Bank Board?

Mr. LYON. Right.

Mr. CHERTOFF. In fact, a couple of months later, you were asked to resign, right?

Mr. LYON. Yes.

Mr. CHERTOFF. By Governor Clinton?

Mr. LYON. Yes.

Mr. CHERTOFF. Out of the blue?

Mr. LYON. Out of the blue. As far as I was concerned, it was out of the blue.

Mr. CHERTOFF. You were not given any explanation by Governor Clinton when he called you up and asked for your resignation?

Mr. LYON. He told me simply that Jim had told him that I would resign if he asked me to, that he really did need the appointment.

Mr. CHERTOFF. So when the Governor called you up to ask for your resignation, he was the one who mentioned having had a conversation with Jim?

Mr. LYON. Yes.

Mr. CHERTOFF. Then you resigned, right?

Mr. LYON. Yes, sir.

Mr. CHERTOFF. I think we've established, it took us a little while to do it, that you weren't happy about it, but you didn't lose a lot of sleep over it either?

Mr. LYON. Right.

Mr. CHERTOFF. And is it fair to say you don't bear any particular ill will to anybody 10 years later about this Bank Board issue?

Mr. LYON. I have no ill will toward anyone about any of the situations.

May I say one thing?

Mr. CHERTOFF. Sure.

Mr. LYON. This gentleman right here proved a point that I have been telling everybody and telling everybody if you'll think about it. In that in trying to get the brew pub for my brewery, it was a different deal than whatever happened to Castle Grande.

Mr. CHERTOFF. That's good. I want to get to the brew pub issue.

Mr. LYON. I appreciate you doing that, thank you.

Mr. CHERTOFF. Let's be clear about this because there are two separate issues. There's an issue, at one point you had a brew pub in Fordyce. You had a brewery in Fordyce?

Mr. LYON. No, it was in Little Rock.

Mr. CHERTOFF. Sorry, in Little Rock. You wanted to set it up like a restaurant where you could sell food and sell beer, right?

Mr. LYON. Right.

Mr. CHERTOFF. You went to a Senator, Senator Scott, and asked him to help you get the legislation through?

Mr. LYON. Yes.

Mr. CHERTOFF. He agreed to do it?

Mr. LYON. Yes.

Mr. CHERTOFF. You also believe you spoke to Mr. McDougal. You are not 100 percent sure, but you think you probably spoke to Mr. McDougal and asked for his help?

Mr. LYON. Yes.

Mr. CHERTOFF. I'm going to put up on the Elmo a letter from Mr. McDougal to Betsey Wright, dated December 12, 1984, which is accompanied by, in fact, the bill that we have been talking about by Senator Scott. It says: Dear Betsey—

Do you know who Betsey Wright was?

Mr. LYON. I know who Betsey Wright was. I do not know, nor have I ever met Ms. Wright.

Mr. CHERTOFF. Who did you understand Betsey Wright to be back in 1984?

Mr. LYON. Basically she was Bill Clinton's aide or secretary. He depended on her quite a bit apparently.

Mr. CHERTOFF. It says here:

Dear Betsey,

Governor Clinton has made a commitment concerning this bill, which I need to discuss with you at your convenience. Best wishes.

Sincerely, James McDougal.

Did you ever see this before?

Mr. LYON. No, sir.

Mr. CHERTOFF. Would you agree with me that this tends to confirm your memory that you probably had a conversation with Mr. McDougal about helping you with this bill?

Mr. LYON. Yes.

Mr. CHERTOFF. I gather what happened is, as Mr. Ben-Veniste helpfully pointed out, that the bill actually never made it through the Senate, it got pulled back?

Mr. LYON. It got pulled back.

Mr. CHERTOFF. So it never reached the Governor's desk?

Mr. LYON. No, it never reached—never went anywhere really.

Mr. CHERTOFF. That was something that was part of Senator Scott's responsibilities, not Governor Clinton's?

Mr. LYON. Yes, Senator Scott is a State Senator.

Mr. CHERTOFF. Now there was a separate deal, or second deal, or second issue that arises with McDougal where McDougal was trying to get you to buy a piece of property in an area he had purchased called Castle Grande. We have now established that was a separate second incident, right?

Mr. LYON. Apparently, yes, but it was within kind of that timeframe.

Mr. CHERTOFF. Within a year?

Mr. LYON. I don't know.

Mr. CHERTOFF. But in your mind, you see them as being connected there in the same general timeframe. OK? All right.

With respect to this second issue, am I correct that McDougal had a number of conversations with you, trying to get you to buy

a piece of property and set up a brewery within this Castle Grande property?

Mr. LYON. Yes.

Mr. CHERTOFF. In fact, you had done some timber removal at Castle Grande?

Mr. LYON. That's right.

Mr. CHERTOFF. By the way, everybody referred to that area as Castle Grande, a well-known part of the area south of Little Rock.

Mr. LYON. Very well-advertised.

Mr. CHERTOFF. Very well-advertised.

Now with respect to the opening of this brewery, and I just have a moment or two left, let me just finish this up. Am I correct that one of the problems that you had, or one of the issues was whether it was a dry county or part of a dry part of the county?

Mr. LYON. There were several issues with it. We did find out that it was in a dry county, yes, or a dry part of the county.

Mr. CHERTOFF. Did you have any discussions with Mr. McDougal about what he would try to do to get permission to open a brewery in this dry part of the county?

Mr. LYON. Mr. McDougal was trying very hard to get rid of—it was a large shed. He told me that he thought I could handle it.

Mr. CHERTOFF. What did you say?

Mr. LYON. I told him that I really wasn't interested because Arkansas is a Southern State, a lot of Baptists. You get in an election like that, you know, I really didn't want any part of that.

Mr. CHERTOFF. So eventually you lost interest in buying that piece of property?

Mr. LYON. No. It started, he asked if I would move the brewery, be interested in moving it because he had a building, and that's when we looked at the shed, Mr. Ward and I. It didn't necessarily occur to me that he was going to sell me the building, that I was going to do all of the improvements, until it came out later, and I really did not have the finances to do anything like that.

Mr. CHERTOFF. You said you went to look with Mr. Ward. Who was Mr. Ward?

Mr. LYON. Mr. Ward—well, I'll tell you who he is now, but I didn't know. Let me tell you who he was then.

Mr. CHERTOFF. Who did you know him to be then?

Mr. LYON. He was a very fine gentleman that I thought sold real estate for Madison Guaranty.

Mr. CHERTOFF. You went with him a few times to look at the building on the property, and then eventually you decided you didn't want to go through with doing the improvements.

Mr. LYON. To look at the shed. It was not a building.

Mr. CHERTOFF. Last question.

During the period of time that you were considering getting into this, or considering moving your brewery or putting up a brewery there, did you know that Mr. McDougal had asked the Rose Law Firm to do some legal work concerning how you might get permission to open up a brewery there?

Mr. LYON. No, sir.

Mr. CHERTOFF. I think, Mr. Chairman, my time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Lyon, I am concerned and disturbed by your reference to Gestapo in terms of contacts with this Committee. What contacts have you had that might lead you to make that statement?

Mr. LYON. Over a period of years, sir, there were two investigations. Sometimes when you're in the position that I'm in, knowing James McDougal and banking at Madison Guaranty, you can get confused about who is who. So I've had contact with various FBI agents over a period of time, and then on this Committee, and you feel like, look, I've answered every question I know.

I'm not directing that, and please do not take offense.

Senator SARBANES. What contacts have you had with staff of this Committee?

Mr. LYON. If it's the same Committee I am thinking about, two gentlemen came down and talked to me for several hours. The interrogatories, is that what you call them, 2 to 3 hours, deposition, I'm sorry, 2 or 3 hours.

We've been calling back and forth trying to get airplane tickets.

Senator SARBANES. Two gentlemen from this Committee came down to Little Rock and had a deposition with you?

Mr. LYON. No.

Senator SARBANES. I thought that's what you just told me?

Mr. LYON. That I just told you what? Came down to Little Rock?

Sir, I apologize. That was a different, that was not this Committee. The people that I was telling you about, OK.

Senator SARBANES. Who were they from?

Mr. LYON. Mr. Starr's Committee, OK.

Senator SARBANES. OK.

So what have your contacts been with this Committee? Can you identify that in your mind?

Mr. LYON. Not really, not this Committee. I can't really identify them right now. My contact with this Committee, as far as I know, has only been a telephone deposition which lasted several hours.

Now when I said what I said, I wish to apologize to this Committee. I don't necessarily wish to apologize to the other Committee, the one in Arkansas.

Senator SARBANES. But you said it to us.

Mr. LYON. That's correct. I don't blame you at all.

Mr. BEN-VENISTE. Let me go back, if I may, to the issue which is very important to us, about your conversation with Mr. Jim McDougal 2 months or so before you received a telephone call from then-Governor Clinton, requesting that you tender your resignation. Earlier, you testified that Mr. McDougal had this preferred stock concept that he wanted to get acted on, that he wanted to get approval for, correct?

Mr. LYON. Yes.

Mr. CHERTOFF. You knew he wasn't talking to you about Madison Bank, he was talking to you about Madison Guaranty Savings & Loan where the preferred stock proposal was going to be made, correct?

Mr. LYON. My assumption at that time that he was talking to me about the stock was that Madison Guaranty, which he was out of the bank by then, I assume, and this was the savings and loan.

Mr. BEN-VENISTE. This is the savings and loan. The bank he had been out of for some time. So in terms of Mr. Chertoff's helpful information about the Rose Law Firm and Madison Bank, that's got nothing to do with this conversation, right?

Mr. LYON. I do not know where the Rose Law Firm is. I do not know anyone in the Rose Law Firm and I don't want anybody to tell me where it is.

Mr. BEN-VENISTE. I understand that. But what I want to get from you, sir, is that it's clear in your mind that what you claimed occurred at that time had to do with a preferred stock proposal involving Madison Guaranty Savings & Loan. That was the focus of your discussion?

Mr. LYON. As I remember it, yes. Madison Guaranty Savings & Loan, or whatever you call it, in Little Rock, Arkansas.

Mr. BEN-VENISTE. At that time, according to my notes of your testimony here this afternoon, you said that Mr. McDougal told you that Mrs. Clinton was involved in the matter, that Mr. McDougal had hired her, and that McDougal thought they were going to get it through, but they still wanted to get you on the Savings and Loan Board so that they could count on your support, correct?

Mr. LYON. Sir, I stand on what I testified. You are either going over testimony or you are going through too many sentences. Keep it kind of simple, sir.

Senator SARBANES. We want to be very clear about this.

Mr. LYON. I've tried to make it very clear.

Senator SARBANES. Now what's the answer to that question.

Mr. LYON. It wasn't a question, it was a series of questions.

Senator SARBANES. Was that a fair statement of what transpired in the conversation between you and Mr. McDougal?

Mr. LYON. I'm sorry, are you asking a question?

Senator SARBANES. Yes. Was that a fair statement of what transpired in the conversation between you and Mr. McDougal?

The CHAIRMAN. Why don't we, in fairness to the witness, put the question to him again Counselor. If you could break it down so that we don't make it a three-part or four-part, I think maybe we would have more luck.

Mr. BEN-VENISTE. Let me break it down.

First, we know we are talking about Madison Guaranty Savings & Loan. Second, Mr. McDougal told you that Mrs. Clinton was working on that issue for him, correct?

Mr. LYON. Yes.

Mr. BEN-VENISTE. Third, that Mr. McDougal said to you that although they thought they were going to get this concept approved, they wanted to put you on the Savings and Loan Board so they could get your support?

Mr. LYON. Yes.

Mr. BEN-VENISTE. Now my point is, and as I have been sort of invited to do, let me make it clear that the Rose Firm was not retained by Madison Guaranty Savings & Loan until April 1985, and that Mr. Latham testified that they had considered the preferred stock possibility for raising funds in the weeks before the Rose Firm was retained to help them. So I ask you, sir, do you think you may have been confused in the testimony that you've given?

Mr. LYON. I've given the best testimony that I know. Unfortunately, I can't tell you that, you know, in June 1954 that I was somewhere, and that seems to me to be the way you're coming at me, sir. I've told you the truth. I've told you where it happened. I just can't tell you when it happened.

Senator SARBANES. Mr. Lyon, let me pursue this for a minute. Your conversation with Mr. McDougal took place before you went off the Bank Board, correct?

Mr. LYON. That's pretty obvious, yes.

Senator SARBANES. I know it's obvious but I just want to get it on the record.

Mr. LYON. OK, yes.

Senator SARBANES. You went off the Bank Board in the beginning of 1984?

Mr. LYON. How do you know that, sir?

Senator SARBANES. I'll ask you the questions. You seem to have been replaced, in this release from the Governor's office, which dates February 28, 1984, and announces that you've been replaced on the Bank Board by James Atkins.

Mr. LYON. He could have replaced me 8 months later. Only if we had the letter of resignation would we know when I resigned because I resigned the same day he asked me to, and that should be in the Governor's office.

Mr. BEN-VENISTE. And that was a year or so before your term was due to expire, isn't that right?

Mr. LYON. That was what?

Mr. BEN-VENISTE. That was a year or so before your term was to expire, do you remember that?

Mr. LYON. No, sir, I do not remember how much longer I had on the term.

Senator SARBANES. Are you asserting that you just don't know when you went off the Bank Board?

Mr. LYON. Am I asserting?

Senator SARBANES. That you don't know when you went off the Bank Board?

Mr. LYON. I'm not sure, no.

Mr. BEN-VENISTE. We'll help you out.

Mr. LYON. You've got it. You asked it.

Mr. BEN-VENISTE. We have the records that you supplied the Committee. Take a look at that, take a moment. Does that help your recollection, the minutes themselves?

Mr. LYON. I would have to sit—I'm reading them. Incidentally, I do believe that I know Mr. Hobgood, James Hobgood.

Mr. BEN-VENISTE. That's fine. We are now asking you when you resigned from the Bank Board?

Mr. LYON. I do not know when I resigned.

Mr. BEN-VENISTE. Look at the document we provided you, which are the minutes.

Mr. LYON. According to this, the minutes of this meeting, they are April 17, 1984, these are the minutes that I sent you.

Mr. BEN-VENISTE. You sent them to us?

Mr. LYON. Yes, sir.

Mr. BEN-VENISTE. Does that help you? You don't think these are erroneous or a forgery? No one is trying to trick you with respect to when you resigned from the Bank Board.

Mr. LYON. No. It simply tells me that the Bank Board had a meeting April 17th. That doesn't mean that I can tell you that at 2:30 in the afternoon of April 4th, that I resigned from the Bank Board, unless you let me read it. It may say that in there.

Mr. BEN-VENISTE. We are not asking you for the moment you resigned, or the day of the week.

The CHAIRMAN. Your time is well over, but I want to get—

Mr. BEN-VENISTE. I want to—

The CHAIRMAN. Please, you're well over and I want to get to the basis. Are we going to play trick ball? If you're contending that his resignation became official as of April 17th then I don't think Mr. Lyon has any argument with you, if that's what your contention is. And the Chair would like to know, is that what your point is?

Senator SARBANES. Clearly, Mr. Lyon had resigned from the Bank Board prior to April 17th.

The CHAIRMAN. Correct.

Senator SARBANES. Now the Governor announced his resignation on February 28, 1984.

Mr. BEN-VENISTE. And these minutes show that Mr. Hobgood is completing the unexpired term of Mr. William Lyon. So unless they were both sitting in the same chair in that meeting, Mr. Lyon was gone and Mr. Hobgood was there.

The CHAIRMAN. Look, Counselor, the record speaks for itself. The meeting of April 17th indicates that there have been two newly appointed members of the board, Mr. Franklin Collier of Augusta and Mr. James Hobgood of Arkadelphia.

Now, as it relates to the date, I'm going to ask Mr. Lyon to the best of his ability, not now, but if he could furnish the Committee, and I'll ask our investigators to see what day, because he seems to have said quite clearly that he remembers sending his resignation in on the date that he spoke to the Governor. Is that true?

Mr. LYON. Yes.

The CHAIRMAN. So on the same date the Governor spoke to you, you sent it in?

Mr. LYON. Yes, sir.

The CHAIRMAN. Obviously the meeting of April 17th memorializes that there are two new appointees. The release of that was not made, as you point out, some time thereafter in February.

Senator SARBANES. Now, Mr. Lyon, you saw earlier the release from the Governor's office on February 28, 1984, remember, when you looked at that here today?

Mr. LYON. The release from the Governor's office?

Senator SARBANES. I saw that.

Mr. LYON. I saw that.

Senator SARBANES. Here today.

The CHAIRMAN. One of the documents provided to you, Mr. Lyon, is a copy of the release in which the appointments were announced.

Mr. LYON. Yes, I saw that.

Senator SARBANES. That was dated February 28, 1984, correct?

Mr. LYON. We think that's correct, yes. We can look.

The CHAIRMAN. It's right up on the Elmo. It says, February 28th, Release.

Mr. LYON. OK, yes, sir.

Senator SARBANES. So it's reasonable to presume that your resignation had taken place before that date since the Governor is announcing on that date that you're being replaced and had resigned?

Mr. LYON. Yes, that would be reasonable.

Mr. BEN-VENISTE. May I just follow up in the time that would be remaining if we got the additional time the Majority had?

The CHAIRMAN. Counselor, you had more than the additional time, and if I hadn't stepped in, you would have still been arguing about some date as it related to who knows what.

Senator SARBANES. Mr. Chairman, I think what we ought to do is just stick to when the red light goes on, shift it over, then we don't get into this. I think that's easier, because Mr. Chertoff ran over and Mr. Ben-Veniste is running over. I think it is probably easier if we just follow the red light.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Lyon, in your areas of responsibility, you became quite familiar, obviously, with your duties as a member of the State Banking Board. And from time-to-time you had occasion to visit the significance of Cease and Desist Orders. Is that correct?

Mr. LYON. No.

Senator MURKOWSKI. Would you clarify your familiarity and your particular responsibility?

Mr. LYON. My responsibility was simply to serve on the board to help the Commissioner in anything that he had.

Senator MURKOWSKI. Was this a salaried position?

Mr. LYON. No.

Senator MURKOWSKI. Did you have an advisory capacity?

Mr. LYON. It was an advisory capacity, they paid mileage. We had nothing to do, as far as I know, when I was there, I never saw a Cease and Desist Order or had anything to do with them, except as a banker. I knew that they were deadly, and when I say that, if you got one, you'd better listen to it.

Senator MURKOWSKI. I couldn't agree with you more. I'm familiar with their existence, having been in the banking business for 25 years. They are not something that a board of directors ignores because there's a personal liability associated with them. Is that not correct that the board does act in a fiduciary responsibility?

Mr. LYON. Right.

Senator MURKOWSKI. I'm curious to know, this advisory capacity, while you weren't the director of banking, you sat as a review board, or you were informed at some level of the areas of activity of the responsibility. Otherwise, there wouldn't have been much point in having a board, would there?

Mr. LYON. We sat basically as a review board for the Bank Commissioner. The Bank Commissioner of the State of Arkansas is a very powerful gentleman.

Senator MURKOWSKI. So you are the sounding board. You have some familiarity with what went on?

Mr. LYON. That is correct. If he has a problem with a bank, there is a chance that he will tell the board. There's also a chance that he will not, and handle that himself. He's over the examiners.

Senator MURKOWSKI. In your testimony today, you made a statement relative to the problems associated with the bank with regard to unsecured loans, out-of-territory loans, and too many loans to politicians. And I think you indicated some names—Bill Clinton, Governor Tucker, and Senator Fulbright. Do you know what the disposition of those loans were? Because obviously you chose to highlight them as being examples of loans that were subject to criticism by the examiners.

Mr. LYON. No, I did not choose to highlight them. I was asked who I heard and anything that I would tell you about that incident is strictly hearsay, a brief, brief conversation.

Senator MURKOWSKI. And you are not aware of those loans being classified?

Mr. LYON. I am not aware that they even had those loans in the bank, Senator.

Senator MURKOWSKI. So that was just an example?

Mr. LYON. Right.

Senator MURKOWSKI. Clearly in the bank, and I'm referring now to one of the exhibits that I think has been provided you, it shows a loan to Hillary Rodham, Little Rock, \$26,792. This is on a report, June 27, 1983, it says to be paid off within 60 days and then it says from Security Bank loan. Do you have any familiarity, does that ring a bell? If you saw that, what would that mean to you as a banker?

Mr. LYON. That would mean that the Securities Bank would pay it off to that bank within 60 days to me.

Senator MURKOWSKI. That bank. I was referring to the examination classification of the Madison Bank and Trust Company.

The CHAIRMAN. Senator, that is on page 15 of the document you are holding.

Senator MURKOWSKI. On page 15 of the document. One could assume then that this particular loan, which was classified, was paid off by a loan from another bank.

Mr. LYON. Correct.

Senator MURKOWSKI. I am interested in this letter from the Arkansas State Bank Department signed by a Marlin D. Jackson, Bank Commissioner. To your knowledge, was Mr. Jackson associated with the Security Bank in, is it Paragoula?

Mr. LYON. Yes.

Senator MURKOWSKI. How was he associated with that bank?

Mr. LYON. At that time, I believe he was a majority stockholder of that bank.

Senator MURKOWSKI. He wrote this letter to Charles Campbell, Vice President, Security Bank, and the date of that was November 1985. To your knowledge, at that time, was he still a significant shareholder of the bank, or had he put his stock in trust as Banking Commissioner for the State Bank Department of Arkansas?

Mr. LYON. To my knowledge, at that time, when he was Bank Commissioner, he had put his stock in trust.

Senator MURKOWSKI. I see, but he hadn't sold it. The trust controlled the stock, and it was a blind trust, do you know?

Mr. LYON. I believe it was, according to what he told me, yes.

Senator MURKOWSKI. You indicated that Mr. Jackson was a friend of yours, and when asked about this particular letter and the appropriateness of it, you said something to the effect that no, it was not right. I assume you were referring to the fact that as Banking Commissioner, to use the stationery to write a letter to obviously an associate, because I assume Mr. Campbell, Vice President of the Security Bank of Paragoula was known to Mr. Jackson and had been in the bank for some time, and had been a previous associate of Mr. Jackson, when Mr. Jackson was active in his ownership of that stock. So they knew each other?

Mr. LYON. Yes.

Senator MURKOWSKI. So what we have here is a case where Mr. Jackson is using his office, his letterhead, to enclose an Extension Agreement which Governor Bill Clinton signed the previous day.

It further goes on to state, "It is my understanding that Jim McDougal, a close friend as well as business associate of Governor Clinton, is to forward to you a check for \$2,322.42 representing the interest due on the note." Why would Mr. McDougal pay Governor Clinton's interest on the note? Do you have any idea?

Mr. LYON. I have no idea.

Senator MURKOWSKI. But clearly that's what the letter states. It further states, "that he intends to make"—it's blocked out here—but I think it's a "principal reduction in addition to the interest payment," and that principal reduction—maybe I am reading \$25,000. I'll have to ask the personal staff to review that.

Furthermore, "after the approval of the agreement, please return the appropriate copies so that it may be delivered to Governor Clinton. Also please request copies of the receipt to me," being Mr. Jackson, the Banking Commissioner.

And then further, "So that Jim McDougal may know that the proper credit has been given, please provide Jim with a copy of the receipt for the payment, of the interest and principal along with the Extension of the notes."

So it's pretty well your opinion then that this loan, which was previously held by Hillary Rodham Clinton, in an amount of \$26,792, that was on the Madison Bank and Trust Company portfolio, was paid off with a loan from the Security Bank of Paragoula, which Mr. Jackson had been formerly associated with, at least a large stock ownership, and was now Commissioner for the State of Arkansas?

Mr. LYON. It does seem that way, yes.

Senator MURKOWSKI. Now, as a banker, can you provide for us, upon recollection, the appropriateness of having another bank pay off a loan that's classified relative to aren't we just transferring the problem basically of one nonpayment to another financial institution that has to bear the brunt of that?

Mr. LYON. Yes.

Senator MURKOWSKI. That's my impression too.

I'm curious to know, when you talked to Mr. McDougal concerning the particular and the rather delicate conversation where he suggested you leave the advisory position on the State Bank Board, and take the position on the Federal Board, which would assist the S&L in the issuance of preferred stock, was there any mention of

any consideration? In other words, he was asking you to step down and do something else. Is there a salary that goes with the S&L Board position? Did he say that he would look favorable—I mean, what was the basis? Was he just asking you to do a favor? Or was there any talk or any recollection of consideration for doing that?

Mr. LYON. I think Mr. McDougal was asking me simply to do a favor. There was no mention of any consideration.

The fact that at the time he didn't really understand the difference between a bank and a savings and loan did disturb me.

Senator MURKOWSKI. That's evident now.

Well, when you recall having sat on that board as an adviser to the Bank Commissioner, I assume that you were aware that a Cease and Desist Order had been initiated against Madison Bank?

Mr. LYON. Barely, just barely aware of it.

Senator MURKOWSKI. How long did you sit on that board? I'm kind of curious in a sense. How long does it take that board to act once they issue a Cease and Desist Order and get back and advise you folks, who are in an advisory capacity, of what action if any had been taken?

Mr. LYON. I sat on the board I believe from 1980 until some time in 1984, right in that area. I knew nothing ever about any Cease and Desist Order, except this one.

Senator MURKOWSKI. What did you know about this one?

Mr. LYON. We were walking into the meeting, and I asked, since I knew they had bought the bank—and I'm talking about "they," Jim McDougal and Jim Guy Tucker and another gentleman named Steve Smith—how they were doing, I was asking, really. They said, "You know that they're under a Cease and Desist Order." And I said, "No, I did not. Why?" They told me what I told you, and we went on into the meeting. That's all I remember.

The CHAIRMAN. Senator?

Senator MURKOWSKI. My last question is in reference to your deposition. I think this is a question by Mr. Gesell:

Question: How, when you say he was bragging about it, did it come up? In discussion with respect to the brewery? Or was it with respect to some other business deal that you had with him?

Answer: No, look. What is boils down to is whether, right or wrong, Jim McDougal thought that he owned Bill Clinton. And that's what it boiled down to. I don't know when he told me all of this, what year it was, but he did tell me that.

Question: He told you that he did own Bill Clinton?

Answer: That's correct.

Do you recall that deposition?

Mr. LYON. Mr. McDougal, right or wrong, said that several times; yes.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much.

Mr. Lyon, you have said, I think very candidly, that years come and go, and you're having trouble pinpointing exact years. I think the reason it's important is, when we take your testimony and lay it down beside the facts of the timing of this, it simply doesn't add up. It doesn't mean that what you remember isn't accurate. But it

says to me—and I think this is very important, and it goes to what Senator Murkowski just said. Mr. McDougal was a braggart, and he said things that weren't true. Because clearly, when he told you that Hillary Clinton was working on this preferred stock matter, the evidence shows you that she was not. He said she was.

I don't question your memory on that. And the fact that Senator Murkowski brings out the fact that Mr. McDougal bragged that he owned the Clintons, that's the point. The facts are that he was bragging, and it gets back to Mr. Lyon's testimony, which Senator Murkowski didn't hear in the beginning—when you said he was a braggart, that he was grandiose, and all the other things that you put on the record.

Now, what we have here, and I would like to put into the record—I see the Chairman isn't here; maybe Senator Shelby could help me—is a report done by Jay Stephens, a Republican U.S. Attorney for Pillsbury Madison & Sutro. I would like to ask unanimous consent that this page be placed into the record, if I might, and that's page 6 of that report.

Senator SHELBY [presiding]. I think that report has already been put in the record.

Senator BOXER. Actually, one paragraph out of that page. It will take about six lines.

Senator SHELBY. The whole report, if I understand, if the Senator from California would yield—the whole report has been made a part of the record.

Senator BOXER. Thank you. Then I will quote it. It will take a little bit longer.

Mr. Chertoff said something that the record doesn't bear out. He said that Madison Guaranty—that the bank was working through that whole entire time, that Rose Law Firm was working through that whole entire time for Mr. McDougal. That is not shown.

I will put into the record and I will state it, since I can't put the document in: "Apart from this case, no evidence has been located suggesting that the Rose Law Firm represented other McDougal-controlled entities until 1985, when it started to represent Madison Guaranty."

Basically through 1981 and 1982, then, they didn't do any more work. Here is a situation where you are saying that Mr. McDougal, before you were asked to resign, told you Hillary Rodham was working for Madison, and in fact that wasn't the case. And that's what's really important and troubling here. It was, it seems to me, a case of showing off, bragging, throwing around Hillary Clinton's name, when in fact the record shows she wasn't working for them.

When the Governor called you to tell you that he was going to ask you to resign, did you tell him about your disturbing conversation with Mr. McDougal?

Mr. LYON. No.

Senator BOXER. You did not.

Did he raise anything about what Mr. McDougal had discussed with you? Did he ask you anything specific about preferred stock or anything else?

Mr. LYON. No.

Senator BOXER. He did not.

Could he have had someone else call you, do you think? Could the Governor have had one of his top staff call you, rather than him calling you?

Mr. LYON. Yes.

Senator BOXER. He could have, but yet the Governor called you and told you that he needed this appointment for someone else. I think that's an important point, Mr. Chairman.

I would say that when you take this witness' testimony, and you include in it his description of Mr. McDougal, added to what Senator Murkowski said, which I think drives it home—that Mr. McDougal felt that he, in fact, owned the Clintons—it leads me to believe that perhaps these conversations took place.

I don't question your veracity, sir, but that it was a bragging kind of a situation. Because when you line it up against, as we have seen from, I think, the excellent questioning of our Counsel, it simply doesn't add up. That is backed up by none other than Jay Stephens of Pillsbury Madison & Sutro.

Now, I just want to pick up on one more point that the Ranking Member said, and then whatever time remains I would yield back, I hope there will be some. That point is your comments about a Gestapo, and I greatly appreciate your apologizing. In fact, you didn't mean it for this Committee, you meant it for, quoting you, "Mr. Starr's Committee." Do you really feel that Mr. Starr's people are using Gestapo-like tactics?

Mr. LYON. Ma'am, in Arkansas, a small State, there are over 40 FBI agents and I don't know how many special prosecutors. This has gone on for many, many months, and you asked me a question that I would really like to forget. I would like to go away, if you all know what I mean. But, gentlemen, enough is enough. It's a small State. Get on with it and get it over, one way or the other.

Senator BOXER. If I could thank you for that comment, my point in asking that question, Mr. Chairman, has to do with when you are going to ask the Senate to continue this investigation. And I have to say, everything that is being covered here is being covered by Mr. Starr, and that this gentleman described the type of intensive questioning that he has gone through.

Now, once again, we line up the testimony. We see the time-frame. And as far as I'm concerned, it adds up to the fact that Mr. McDougal was a braggart, he was grandiose, and he threw names around of important people. Because the facts are, according to Jay Stephens—who is not a Democratic partisan individual. To the contrary. All that he states, that there was no work being done by Hillary Rodham Clinton at that very time when that conversation had to take place, given the facts before us.

I would yield to Mr. Ben-Veniste whatever time I have left.

Mr. BEN-VENISTE. I just want to ask one question. Earlier, you were asked, Mr. Lyon—and let me direct your attention back to this project that Mr. McDougal was involved in, because it is of some interest to us—when Castle Grande was known as Castle Grande. First of all, what you're referring to is a trailer park, basically, is that correct? Castle Grande is a development?

Mr. LYON. It was a development mostly on trailers, and then there were other things planned, I'm sure. But it was a development, yes.

Mr. BEN-VENISTE. We have heard it described as Castle Grande Estates. Did you ever hear the "Estates" part of that mentioned?

Mr. LYON. I believe on the advertising I have heard that. It was Castle Grande.

Mr. BEN-VENISTE. Did that have some particular meaning in terms of the land that it was on? What did Castle Grande mean?

Mr. LYON. Castle Grande, I believe, came from the name of the trailers that he was putting on the lots and selling. But I don't know that. I don't remember that.

Mr. BEN-VENISTE. You think the trailers themselves. Is that a brand name of a trailer?

Mr. LYON. That's kind of what he said, yes.

Mr. BEN-VENISTE. A super-jumbo trailer, some kind of extra-wide trailer?

Mr. LYON. Very nice trailers.

Mr. BEN-VENISTE. Hence "Castle," and then large, "Grande." OK.

So very nice large trailers were going to go on there, and that was going to be the name. It wasn't that this land was called Castle Grande before Mr. McDougal got ahold of it.

Mr. LYON. No.

Mr. BEN-VENISTE. It wasn't that people from that area walked around and said, "Oh, that's the Castle Grande neighborhood."

Mr. LYON. No.

Mr. BEN-VENISTE. This was all something that was dreamed up and then promoted.

Mr. LYON. That's correct.

Mr. BEN-VENISTE. My question is, you had been on the land, and you hauled some timber or some such off the land?

Mr. LYON. Correct.

Mr. BEN-VENISTE. It wasn't known as Castle Grande then, when you hauled the timber off of it?

Mr. LYON. No.

Mr. BEN-VENISTE. It was only until somebody started to promote it and tried to sell it. Do you remember—and I know it's hard going back all this time—but do you remember when these ads started to come out? Was that associated with anything in your mind?

Mr. LYON. He had a development named Maple Creek, and then went immediately to Castle Grande. It was associated with nothing in my mind, no. It was just a name.

Mr. BEN-VENISTE. So when people in Arkansas started to refer to it as Castle Grande, that was after all the promotional material had been in the newspapers, or billboards, or whatever might have been out there?

Mr. LYON. Yes.

Mr. BEN-VENISTE. You never seriously considered relocating your brewery to this warehouse, did you, if I understand your deposition testimony?

Mr. LYON. I seriously considered it until I found out he wanted me to buy the building and do all of the—and then I unseriously considered it. OK?

Mr. BEN-VENISTE. Mr. McDougal's idea was that you would pay for the whole deal and finance it, and move your brewery there?

Mr. LYON. He would finance it.

Mr. BEN-VENISTE. But you'd be responsible for paying it back.

Mr. LYON. Right. I knew who was going to pay for it, and he's sitting right here.

Mr. BEN-VENISTE. So that was not appealing to you, and conversations thereafter were strictly on the basis of trying to be nice to Mr. McDougal, who was holding the note on all this money you owed him. You listened, but you weren't that serious anymore after he had revealed what he had in mind for you in this project?

Mr. LYON. Right.

Mr. BEN-VENISTE. OK.

The CHAIRMAN [presiding]. Mr. Lyon, we're going to take a break right after this line of questioning. I'm going to try to do this in 2 minutes, if I can, and then turn to Senator Shelby.

You have testified basically—and if I'm wrong, again, I want you to correct me; I'm not trying to put words, I'm trying to summarize—that there came a point in time sometime in 1983, early 1984, when Jim McDougal came to you and said, "Look. I want you to go on this different Bank Board. And the reason is, we have this preferred stock. That board is going to be making a decision. I'd like you to support it." Is that correct?

Mr. LYON. Basically. He didn't necessarily say "preferred stock." He was trying to raise capital for his bank or his savings and loan.

The CHAIRMAN. You told him, and I'm quoting you, "hell no." Is that right, about going over to that board and just giving it an approval to his proposition?

Mr. LYON. Yes, sir.

The CHAIRMAN. The reason you told him "hell no" is not so much the details of the deal, but the fact that he wasn't going to have your vote in his pocket, so to speak, just because you got on that board. Is that right?

Mr. LYON. Yes, that's right.

The CHAIRMAN. Then he told you that if you weren't going to do this, that the Governor was going to call. He first said, "I want your resignation from the board you're on now." Is that right?

Mr. LYON. That's right.

The CHAIRMAN. You told him no. Is that right?

Mr. LYON. That's right.

The CHAIRMAN. You said, "That's something the Governor has to ask me to do that." Is that right?

Mr. LYON. That's right.

The CHAIRMAN. He said to you, basically, "I'll have the Governor call you." Is that right?

Mr. LYON. That's right.

The CHAIRMAN. And within a period of about 2 months, you got a call from the Governor. Is that right?

Mr. LYON. That's correct.

The CHAIRMAN. In your deposition, and that's in front of you, you say: "He called me at the Pine State Bank." That's page 62. Would you put it up on the Elmo? Is that right?

Mr. LYON. That's right.

The CHAIRMAN. Moving up to page 61, you're talking about the Governor, line 15: "The Governor called me over at the bank and he told me that Jim had indicated to him that I would resign if he asked me to." Did Governor Clinton tell you that Mr. McDougal

had spoken to him and said that you would resign if the Governor asked you? He told you this?

Mr. LYON. Not in those terms. He said, "Jim said that you would be willing to resign." And as I told you, Governor Clinton was very nice about it. There was no——

The CHAIRMAN. There was no pressure. He just told you as a matter of fact that Jim had told you this?

Mr. LYON. That's right.

The CHAIRMAN. And repeated his position?

Mr. LYON. He thanked me and told me that he needed the appointment. And he was a super-nice man.

The CHAIRMAN. McDougal had told you that they needed this appointment for some fellow who came from a town that helped raise a lot of money. Is that right?

Mr. LYON. That's what he told me. Whether it was true or not, I don't know.

The CHAIRMAN. Were you surprised when the Governor called?

Mr. LYON. Yes, sir.

The CHAIRMAN. You were disappointed, weren't you?

Mr. LYON. Yes, sir. I was disappointed.

The CHAIRMAN. And the reason you were disappointed was that McDougal could actually get the Governor to call you and ask you to resign. Isn't that true?

Mr. LYON. Yes, sir. That's true.

The CHAIRMAN. You were disappointed. As you said, the Governor's a good man, but the fact—you never really believed when McDougal first told you this, you weren't sure whether he was bragging or not. But it did come to pass. What he told you turned out to be more than bragging, and that surprised you, didn't it?

Mr. LYON. Yes.

The CHAIRMAN. And you were disappointed.

Mr. LYON. Yes.

The CHAIRMAN. OK.

Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. When Governor Clinton appointed you to the State Bank Board, was that probably about 1982?

Mr. LYON. I think it was some time around 1980.

Senator SHELBY. About 1980? OK.

Was Mr. Jim McDougal—is that his name, Jim McDougal? Mr. McDougal at that time was working for Governor Clinton?

Mr. LYON. When I was appointed, Mr. McDougal was Governor Clinton's number one aide, as I understood it.

Senator SHELBY. Number one aide at that time. So was your contact regarding being appointed to the Arkansas Bank Board—is that what you call it, the Arkansas Bank Board—was that done in a sense through Mr. McDougal's contact with you?

Mr. LYON. Yes, sir. From years ago, yes, sir.

Senator SHELBY. And you said the year was about 1980?

Mr. LYON. I believe it was, yes.

Senator SHELBY. Did Mr. McDougal tell you or indicate to you that in 1980 or thereabouts, that he would get Governor Clinton at that time to appoint you to the State Bank Board?

Mr. LYON. Yes.

Senator SHELBY. How long was it between when Jim McDougal told you he was going to get or recommend that the Governor appoint you to the State Bank Board and the appointment? How long was it before the appointment came through, more or less?

Mr. LYON. Well, it really was not very long. Once again, I do not remember—

Senator SHELBY. The exact date?

Mr. LYON. That's right.

Senator SHELBY. Was it within weeks?

Mr. LYON. I'd say probably months.

Senator SHELBY. About a month, several months?

Mr. LYON. Yes.

Senator SHELBY. But your contact was with Jim McDougal regarding the appointment to the Bank Board, which later the Governor of Arkansas, Bill Clinton, appointed you to; right?

Mr. LYON. Right.

Senator SHELBY. Did Governor Clinton call you and tell you he was appointing you to the Bank Board in 1980?

Mr. LYON. No, sir.

Senator SHELBY. You served on the Bank Board for how long? From 1980 approximately until you resigned.

Mr. LYON. Until at least 1984, yes, sir.

Senator SHELBY. How long was your appointment for? What was the term of your appointment?

Mr. LYON. I do not remember.

Senator SHELBY. Whatever it is is a matter of record, is it not?

Mr. LYON. Yes.

Senator SHELBY. Now, in Arkansas, I assume that the State Bank Board deals with banks, and the savings and loan deals with thrifts. You have a separate board that deals with savings and loans or savings banks?

Mr. LYON. As far as I know, yes.

Senator SHELBY. As you were sitting as a member of the State Bank Board, you did not deal with savings and loans, did you?

Mr. LYON. We had no dealings with savings and loans, no.

Senator SHELBY. I know this has been asked, probably, in certain ways—but when did Mr. McDougal first mention to you about the possibility of a change from the Bank Board to the Savings and Loan Board? In other words, did he tell you that he needed help over on the Savings and Loan Board, or whatever you would call it in Arkansas; a different regulatory board?

Mr. LYON. Yes.

Senator SHELBY. What did you say, if anything, when he mentioned this to you?

Mr. LYON. I will say it again. I told him not "no," but "hell no."

Senator SHELBY. "Hell no." Did you feel like again that something didn't smell right, didn't sound right, wasn't right?

Mr. LYON. It wasn't that as much as the fact that Mr. McDougal was not basically going to tell me what to do or how to vote. It may have been fine, I don't know.

Senator SHELBY. At that time, you told him that you would not resign from the Bank Board unless Governor Clinton asked you to, is that right?

Mr. LYON. That's correct, yes, sir.

Senator SHELBY. Did he tell you that the Governor would be asking you to?

Mr. LYON. Yes, he did.

Senator SHELBY. You didn't believe the Governor would be calling you until he actually called you?

Mr. LYON. No, I did not. I didn't believe, I never believed it.

Senator SHELBY. You believe it now, don't you?

Mr. LYON. Yes, I believe it now.

Senator SHELBY. As a matter of fact, it's a reality. The Governor at that time, Governor Clinton, called you as McDougal told you he would, or suggested that he would, and asked you to resign, in other words, is that correct?

Mr. LYON. In other words, that's correct.

Senator SHELBY. Going on to another point, did Mr. McDougal say to you that Mrs. Clinton was on retainer for his bank, the Madison Bank, at the Rose Law Firm?

Mr. LYON. Yes.

Senator SHELBY. He didn't say that anyone else at the Rose Law Firm was retained, did he?

Mr. LYON. No.

Senator SHELBY. He said Mrs. Clinton was on retainer at the law firm?

Mr. LYON. He did not say the Rose Law Firm.

Senator SHELBY. Did he say Mrs. Clinton was on retainer for his bank?

Mr. LYON. Yes.

Senator SHELBY. He didn't mention any other lawyer, did he, other than Mrs. Clinton?

Mr. LYON. No.

Senator SHELBY. And is the Bank Commissioner in Arkansas appointed by the Governor?

Mr. LYON. Yes.

Senator SHELBY. Mr. Marlin Jackson, who was the Bank Commissioner of Arkansas in November 1985, who signed this letter we've been talking about here today you're familiar with—he was appointed by Governor Clinton?

Mr. LYON. Yes.

Senator SHELBY. Did you know Mr. Jackson real well?

Mr. LYON. I believe Mr. Jackson was one of the finest banking commissioners we've ever had. I know him, yes.

Senator SHELBY. Do you know of your own knowledge if Mr. Jackson and his predecessors in Arkansas as Bank Commissioner just routinely used State stationery to transact private business like this? Was this what they did all the time, or do you know?

Mr. LYON. I would hope not, sir.

Senator SHELBY. I would hope not.

The CHAIRMAN. We're going to take a 15-minute break, Mr. Lyon. Counsel has requested that. I don't know how much longer we'll go, but whatever the time is—no longer than 5 minutes? Do you want to try to finish it now? OK. If that's the case, let's go to this side. But we have about 5 minutes, no more than 10 minutes.

Mr. Lyon, does that meet with your approval? We could probably wrap this up in maybe 15 minutes, the whole thing, and then we won't have to take a break and come back. Or do you need a break?

Mr. LYON. No, sir, that's fine. Let's do it all.

The CHAIRMAN. Try to finish it? OK.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

I'm going to be brief. Let me try to finish up a couple of points.

Mr. Lyon, the questions that have come to you have been designed to suggest that Mr. McDougal was just throwing the Governor's name around and just making things up, and none of it was true. I think it's your own words; you said that when you had the experience that Jim McDougal said the Governor would call, and the Governor did call, and the Governor mentioned Jim McDougal's name, that made it believable. Is that fair to say?

Mr. LYON. Mr. McDougal, the way he is pictured by the press now, at that time was a far, far different man than he is now.

Mr. CHERTOFF. Different in what way?

Mr. LYON. You're talking about a man that was in business with Governor Clinton; had done business with Jerry Jones, owner of the Dallas Cowboys; and with Shef L. Nelson, who almost beat Clinton for the race. Mr. McDougal was, as I say, a very likable and very fine man. And because he was Bill Clinton's friend, or because he was my friend, doesn't necessarily mean that he was a braggart all the time. I brag, too. You would have to take him with a grain of salt sometimes. But he was really at that time a pretty good individual.

Mr. CHERTOFF. There are things that you did know. In those days, Mr. McDougal was a respected man in the community.

Mr. LYON. Yes.

Mr. CHERTOFF. He was known to be close with Governor Clinton.

Mr. LYON. Yes.

Mr. CHERTOFF. You knew him to be involved with this Madison Bank. He owned the bank, right?

Mr. LYON. He owned a bank originally.

Mr. CHERTOFF. Whatever you want to say about Mr. McDougal, whether you had to take him with a grain of salt—I mean, we have in the record a memo on the Governor's office stationery which says, plain as the light of day, "Banking Board, ask McDougal." And I want to put another one on now, which is MG 759.

This is a memo of February 7, 1985, to Governor Bill Clinton from Jim McDougal. And it says, "Kathy called yesterday to ask for my recommendations for two people to fill the vacancies on the State Savings and Loan Board." Do you know who Kathy was? Did you know a Kathy in the Governor's office? Did you ever hear of a Kathy?

Mr. LYON. I do not know a Kathy in the Governor's office, no.

Mr. CHERTOFF. In this memorandum, Mr. McDougal writes to the Governor in response to this request for his recommendations that he was going to recommend two people. One is John Latham, whose name you've already heard, who was Chairman of the Board of the Madison Guaranty Savings & Loan, and later pled guilty to creating a false document. And then a Jerry Kendall of Camden. Do you know Jerry Kendall?

Mr. LYON. I don't; no, sir.

Mr. CHERTOFF. Did you know John Latham?

Mr. LYON. Yes, sir.

Mr. CHERTOFF. How did you know John Latham?

Mr. LYON. John Latham was President, I believe, of Madison Guaranty at one time; a very young CPA.

Mr. CHERTOFF. A pretty young guy, young fellow?

Mr. LYON. Yes.

Mr. CHERTOFF. Let me complete the picture by putting up DKSJ 25966, which is the page of announcements of the actual appointments made, about a month later. True to form, as you've told us with your own experience, Mr. McDougal's recommendations, in fact, became appointments. John Latham became appointed and Jerry Kendall became appointed. So I guess even into 1985, Mr. McDougal was still able to have a big say in the appointment of the people who were on the Savings and Loan Board.

Now, let me ask you this. This 1985 memo is a couple of years after that Cease and Desist Order at Madison Bank and Trust that we have talked about, where the regulators essentially applied an order to cease and desist bad banking practices at Madison Bank and Trust. Does it surprise you that an individual who was sanctioned by the Federal regulators and the State regulators in 1983 for bad banking practices, or unsafe banking practices, would be making determinations about who would be a savings and loan regulator 2 years later?

Mr. LYON. Not really. And when I say that, if he'd straightened his act up, you know—if he was doing something wrong, they told him he was doing something wrong, he straightened it up and he still was able to do that, it doesn't surprise me all that much, no. If he didn't straighten it up, yes.

Mr. CHERTOFF. I think, Mr. Chairman, that's all I have.

The CHAIRMAN. OK.

Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Thank you, Mr. Chairman.

Mr. Lyon, I just want to try to understand if I can some of the dates here. Because I gather that, by your own testimony, you are not certain of all the dates. Is that accurate?

Mr. LYON. That's accurate.

Senator KERRY. So when you testified in your deposition that it was in 1982, during Clinton's first term as Governor, that Mr. McDougal approached you and asked you if you wanted to serve on the Bank Board, you were incorrect in that deposition about that date. It couldn't have been 1982, correct?

Mr. LYON. It was just, I believe, that in the deposition I said I know it was Clinton's first term.

Senator KERRY. So the first term, in fact, would have been 1978. Is that right?

Mr. LYON. I do not know.

Senator KERRY. 1979 to 1981. Wasn't he elected, then he lost an election, then he came back?

Mr. LYON. Yes, sir. He was elected, he lost the election, then he came back.

Senator KERRY. What year was he first elected?

Mr. LYON. I have no idea.

Senator KERRY. 1979, I believe. So if it was in his first term, you were off by 4 years on that particular date in your deposition. I mean, you're sure it was in the first term?

Mr. LYON. I don't know, sir. You can catch me on dates every minute of this year, OK? I am trying to answer your questions truthfully.

Senator KERRY. Sure, I realize that.

Mr. LYON. I do not know whether it was his first term or his second term. I do know that Jim McDougal was an aide I think it was his first term.

Senator KERRY. The reason it is obviously very important—and I'm not trying to catch you, believe me, I'm not trying to catch you. I'm just trying to know what the weight of your testimony is, and whether it is the first term or the second term. When somebody asks somebody something here it is very important. Don't you acknowledge that?

Mr. LYON. It may be very important, but it doesn't necessarily put recall in a person's mind. Because when the date was, or the year even, over a long period of time—

Senator KERRY. Fair enough.

Mr. LYON. We're talking about 15 years ago, what you asked me about; 16.

Senator SARBANES. Didn't you say that you served through Governor White's term?

Mr. LYON. Yes, sir.

Senator SARBANES. And Governor White came after Governor Clinton's first term?

The CHAIRMAN. That's correct. Is it fair to say that you might not be exactly, as you have testified—if the Senator will yield, I'll yield the time back to my colleague—that you might not be sure exactly when the Governor's first term started, but that you came to this position in approximately 1980, during his first term?

Mr. LYON. Right. I don't know exactly when Jim McDougal started being an aide.

The CHAIRMAN. Senator Kerry—just to the point, again, of what he did testify to, he doesn't recall. Senator Sarbanes has pointed out that he did serve, and I think we can check the record through; that the following Governor was White, and you continued to serve on through the next Governor's term, for the next 2 years. Is that correct?

Mr. LYON. Part of the next Governor's. May I answer your question, sir?

Senator KERRY. Sure.

Mr. LYON. You wanted to ask me a question.

Senator KERRY. At the time that Mr. McDougal came to talk to you, he was working for the Governor. Correct?

Mr. LYON. No.

Senator KERRY. When he asked you to serve on the board?

Mr. LYON. On the Bank Board?

Senator KERRY. Correct.

Mr. LYON. Yes, he was working for the Governor.

Senator KERRY. So it was in the normal course of his business as an official working for the Governor of Arkansas that he invited you, on behalf of the Governor, to join the board. Correct?

Mr. LYON. That's correct.

Senator KERRY. There's nothing unusual about that?

Mr. LYON. No.

Senator KERRY. It is an appropriate role for him to perform as Governor?

Mr. LYON. Yes.

Senator KERRY. You at that time worked for a bank? You owned a bank?

Mr. LYON. Yes.

Senator KERRY. You owned the smallest bank in the State?

Mr. LYON. Right.

Senator KERRY. So subsequently, since you served at the pleasure of the Governor, did it strike you as unusual that conceivably the Governor might want you to serve on a different board, or might have different plans when he was reelected to be Governor as to who he might want to have serve on the Bank Board?

Mr. LYON. Would you mind rephrasing the question?

Senator KERRY. Would you not say that in the normal course of the Governor's rights and privileges as Governor, that he might want to move you onto another board and have someone else serve on the Bank Board in the course of having been reelected at a subsequent point of becoming Governor?

Mr. LYON. That would be possible, yes.

Senator KERRY. Again, I am just trying to understand this in terms of dates and times. Because, again, I think that's important.

You have testified in your deposition that when you were asked by Mr. McDougal, with respect to going off the Bank Board, you were also asked about the preferred stock option. Is that correct? You said he wanted you to vote for the preferred stock option?

Mr. LYON. I was asked to resign from the Bank Board and go on the Savings and Loan Board, and it was explained to me in general terms. That's what I'm telling you.

The conversation was, he explained to me that—he didn't necessarily say "preferred stock"—his stock deal, that he had to get it through, and that he wanted me to help him get it through on this board. That doesn't mean that I could have, that doesn't mean that I would have had any influence. That doesn't mean anything except he wanted me to go on another board and vote his way. He may not have needed any help. I don't know.

Senator KERRY. In your deposition on page 57, line 12, you said,

He came over and asked me to resign and serve on the Savings and Loan Board, and he was bound and determined to get the stock issue through so he could get his capital increase. It was a preferred stock deal.

So you were certain in your deposition, I take it, that it was a preferred stock deal. Now you apparently have a different view.

Mr. LYON. I was certain then. I'm certain now. What I'm telling you is that he didn't necessarily say to me, in a conversation 10 years or so ago, "preferred stock." I knew it was preferred stock. He said, I think, "stock deal."

Senator KERRY. Do you know that the preferred stock offering work didn't begin until 1985?

Mr. LYON. No.

Senator KERRY. If you had documents that showed you that the work on the preferred stock did not begin until 1985, would you then think you might be mistaken about this conversation in 1984 or earlier, 1983?

Mr. LYON. I have no idea, sir, what date the conversation was held. I repeat, I have no idea what date the conversation was held.

Senator KERRY. You will acknowledge that if you don't have any idea what date the conversation was held, then it's very hard for you to be able to add weight to the question of whether or not your testimony refers to a preferred stock deal or not. You would agree, would you not?

Mr. LYON. Sir, I do not care if I add any weight to the testimony, all I have told you is the truth.

Senator KERRY. I understand that. But see, I'm trying to get at what the truth is. If there was no preferred stock deal until 1985, and you went off the Bank Board—you were asked to go off 2 months prior, according to your testimony, in 1983. Because the records show you went off the Bank Board in February 1984. So if you're off the Bank Board in 1984, and no work began on a preferred stock deal until 1985, it's very hard for me to understand how you could have a conversation about it in 1983.

Mr. LYON. I don't know that it was 1983.

Senator KERRY. That's critical, I think that's very important.

Mr. LYON. It might be critical, but I do not know.

Senator SARBANES. Mr. Lyon, you have told us, though, that this conversation took place a couple of months before the Governor called you and asked you to resign. You've repeated that a number of times here today, have you not?

Mr. LYON. Yes.

Senator SARBANES. So then, the date when the Governor asked you to resign would be relevant. You don't remember when that date was, correct?

Mr. LYON. Correct.

Senator SARBANES. But the records show that the Governor, in a sense, indicated you had resigned and named someone else to the board in a release from the Governor's office on February 28, 1984. And the minutes of the Bank Board, which you looked at earlier, showed that at their April 17th meeting, it was indicated that you were gone and someone else was there. So, all of this had to take place before those dates. Is that not correct?

Mr. LYON. If you say so, sir. I'm just testifying, trying to answer a question.

Senator SARBANES. I am working off of the fact that you told us, I think repeatedly, that the conversation with McDougal was—first of all, I asked you did it happen before the Governor asked you to resign. And you told me obviously it did, which follows.

Mr. LYON. Yes, sir. I'll tell you again; obviously, it did.

Senator SARBANES. All right.

The CHAIRMAN. If there's other questions, we'll pursue it. But it becomes rather obvious, if one looks at the record, that the Governor announced in February the new appointments.

Senator SARBANES. February of 1984.

The CHAIRMAN. February 1984. And that was approximately 2 months after Mr. McDougal spoke, as this is Mr. Lyon's testimony, that the Governor called him. So necessarily it would follow that some time in late 1983, or very early 1984, that this took place. Mr. McDougal spoke to you, and then the Governor 2 months thereafter spoke, and I don't see any inconsistency; or that the fact that Mr. Lyon could not have had a conversation with Mr. McDougal—I certainly don't think he created a story about a stock offering, because it was the very basis upon which he refused to serve on that board.

He said, "hell no." Thereafter, it may have been fully a year plus thereafter before that stock offering was pursued. But I have no doubt, and I don't think that anyone here who has heard Mr. Lyon testify doubts the veracity of his conversation or his recollection and his testimony; that, indeed, Mr. McDougal approached him, told him about his plan to have him serve on another board, and when he turned him down, he told him the Governor would call to ask him to resign.

He was surprised, thereafter, when the Governor did, within about 60 days. We know that, as a matter of fact, he did resign. And in early 1984, two other people were appointed.

Now, the question as to the stock offering: He had no way of knowing at that time when that was pursued. Indeed, I think he's testified he wasn't really aware of it. But that was Mr. McDougal's conversations to him. Then the next we know, it's not until 1985 that there is a stock offering a year later.

That took place. There was an attempt to get the regulators, and the regulators did approve a stock offering plan. So—

Senator KERRY. I'm constrained to say that the Chairman's memory is an awful lot clearer than the witness'.

The CHAIRMAN. Only because I've had the benefit of listening and seeing the records.

Senator KERRY. There's sort of a double standard here. When this witness can't remember anything, it goes to the truth of what is being asserted. When Maggie Williams doesn't remember anything, it goes to the guilt.

The CHAIRMAN. I think it does, Senator, really characterize very clearly what took place. He's not willing to specify a particular date and say that it took place 32 days thereafter that I got the call. He says within a period of about 2 months.

But having said that, I think the substance of his conversation is quite clear. If we want to say that we don't have confidence, I'm willing to say that I believe that he's testified to the best of his ability, with all due candor. If others see it differently, why, they have to make that interpretation.

From my point of view, and I admit it's mine, my colleagues have a right to their own opinions, as we all do, but I want to thank you, Mr. Lyon, for participating in what is not an easy situation. I said that we don't expect total recall from any or all of the witnesses. But from my perspective, I want to thank you for being candid, and you have indicated that this has not been pleasant; that you have had some unfortunate experiences. We are glad to learn that it was not with the staff of this Committee.

I am ready, after my colleagues make whatever closing remarks they want, to adjourn this hearing until next Thursday.

Senator Sarbanes.

Senator SARBANES. Mr. Lyon, I think the problem arises that the conversation about the preferred stock and the retention of Hillary Clinton on a retainer by Madison Guaranty Savings & Loan did not occur until the spring of 1985. You recount that as part of a conversation with McDougal which obviously had to take place some time in early 1984 or late 1983. Let me put this question to you, though. You've been interrogated, I take it, at great length by the staff of the Independent Counsel. Is that correct?

Mr. LYON. Not necessarily by the staff of the Independent Counsel. It just seems to go on, and on, and on.

Senator SARBANES. I include the FBI agents.

Mr. LYON. I would rather not say any more about this. As I say, I apologize to you all.

Senator SARBANES. I would rather not pursue that. But what happens in the course of these extended questions, that often questions are put to you repeatedly, and then you sort of incorporate them into your own thinking, and your own thinking becomes part of the story. Let me give you an example here.

You were asked in your deposition:

Question: So you were attempting to get this bill passed through Senator Scott for the brewery that you owned in Little Rock, and at the same time Mr. McDougal wanted you to invest in a brewery, move your brewery to Castle Grande.

So you were concerned about the restrictions on both places in terms of the manufacture of beer and the sale of it on premises. Correct? That's the question that was put to you. And you said, "Yes, sir."

Now, when you looked at it earlier today, when we went over it here, you expressed some problems with that. As I understand it, the problem was that moving the brewery over to Castle Grande did not come at the same time as you were trying to get the bill through with Senator Scott. You said later that these were two separate things. Is that correct?

Mr. LYON. I very much appreciate counsel bringing that out. I have tried and tried to explain that I was trying to get a brew pub at my brewery.

Senator SARBANES. Right.

Mr. LYON. All of the information that shows up that McDougal wrote about a brewery may have been about mine. But I wasn't as concerned about that as I was in going through Senator Scott and a man named Bennett. The McDougal deal would have been later.

Senator SARBANES. Would have been later?

Mr. LYON. Would have been later if it were possible. But it was financially impossible for me to do what he wanted to do, and it would be to most people.

Senator SARBANES. Right. The point I am making is, as these queries are put to you, you sometimes simply accept them. They become part of the story. In this instance, the phrase, "and at the same time" really was inaccurate. It shouldn't have been there, because the other came later.

Mr. LYON. Oh, yes, sir. Like I say, you can always find one word.

Senator SARBANES. OK. All right.

The CHAIRMAN. Mr. Chertoff, let's wind it up.

Mr. CHERTOFF. I want to leave you with a last question, Mr. Lyon, because I think you should go out of here without feeling that people necessarily think you have been totally confused, or contradicted, or whatever.

I understand you told us at the beginning of the deposition that in terms of dates, you were sometimes a little unclear as to the dates, which is completely understandable. At the same time, the conversation you described with Mr. McDougal at the brewery where he talked to you about the Savings and Loan Board—I mean, you have never deviated from your description of that conversation. My understanding is, and correct me if I'm wrong, that you have a memory of that. You can almost in your mind picture where you were when you had that conversation, and it's that memory you're drawing upon.

And just so you understand, in terms of your own memory, there is evidence in the record that the Rose Law Firm, which was Mrs. Clinton's law firm, was retained by the Madison Bank from 1982. In fact, the evidence is Hillary Clinton's own statement to investigators.

As far as the question of the stock offering, am I correct that all you knew from Mr. McDougal when he talked to you about the stock offering was that he was thinking about the stock offering. Is that right?

Mr. LYON. Right.

Mr. CHERTOFF. You have no way of knowing, when you said "no" to him, how much longer he worked on it, when he began to get other people involved in it, why it took him a year to finally get it through when they had a new commissioner. Because there was eventually a new commissioner appointed the following year, who's the one that had blessed this thing.

All you have come here to tell us about is that which you remember, that which you experienced, and that which you know to the best of your ability—to tell the truth. Is that correct?

Mr. LYON. That is correct.

Mr. CHERTOFF. Thank you.

Mr. BEN-VENISTE. Mr. Lyon, simply on the basis of what has been said here, it's not as though we are operating in a vacuum about when this preferred stock question was first raised. We have John Latham's statement and we have Mr. Massey's testimony.

The CHAIRMAN. Mr. Ben-Veniste, let me say this to you. For the record, we know when the proposed stock offering was put, the letters to the Committee. We know that it was about a year after Mr. Lyon testified that he had this conversation with Mr. McDougal.

I think it's not fair to the witness. He cannot testify to it. He can't tell you why it took a whole year thereafter. He testifies as to events that he is aware of.

If you want to stipulate in the record that indeed—and we know, and we've had ample testimony that this did not take place, the offering itself, until 1985, so be it. It's part of the record. It's there.

Senator SARBANES. Mr. Chairman, we know that the thinking about the offering took place more than a year later.

The CHAIRMAN. Yes.

Senator SARBANES. That's when all of this occurred, and that it was well over a year later when the retainer——

The CHAIRMAN. Well, we'd have to get Mr. McDougal in here to ascertain why it is that it took longer.

Senator SARBANES. More than a year later when the retainer arrangement was entered into with respect to Hillary Clinton. We know that from previous testimony.

The CHAIRMAN. In other words——

Senator SARBANES. We have a conversation in late 1983 or early 1984 which encompass subject matter which applies to the spring and later of 1985.

The CHAIRMAN. Well, then I think we have to be specific. If we say that thereafter following this there was a stock offering plan, I think that's consistent with Mr. Lyon's testimony.

I don't think it is totally consistent as it relates to Mrs. Clinton's retainer. That's a separate matter. However, I believe there is testimony in the record that Mrs. Clinton has given to regulators that indeed she did work, and the Rose Law Firm did work, for the Madison Bank back in 1980.

Mrs. Clinton said that she believed Madison, then as Madison National Bank, had been a client of the Rose Law Firm since 1982. So the fact that thereafter there was another retainer agreement does not contravene what Mr. Lyon said.

And, by the way, we cannot attribute to him the truthfulness of all of Mr. McDougal's statements. He's gone to great lengths to say, "Look, I know sometimes he brags." So he's not here as a witness to testify to the truthfulness of all of Mr. McDougal's statements. But I think it is key that he can say that within 2 months after Mr. McDougal telling him that the Governor would call and ask him to resign, that that's exactly what happened.

He did say, with specificity—and he wasn't angry at the Governor; he said the Governor was polite. He said that, "Jim has told me, you know, that you would be willing to step aside." Was that not your testimony, Mr. Lyon?

Mr. LYON. That was my testimony.

The CHAIRMAN. So, to say that the stock offering didn't take place, or the planning for it, for at least a year later, that is correct. That is true. There's no argument with that.

Senator SARBANES. Now, Mr. McDougal wanted you to go on the Savings and Loan Board, right?

Mr. LYON. I testified that's right, yes, sir.

Senator SARBANES. That was because the preferred stock offering was going to be pertinent to a savings and loan, not to a bank. Otherwise he would have left you on the banking board, right? So he wanted you to go over to the Savings and Loan Board to act on a stock offering. Is that correct?

Mr. LYON. At that time, I don't even know that Jim McDougal owned any portion of the bank.

Senator SARBANES. Of the bank?

Mr. LYON. Of the bank.

Senator SARBANES. You mean, he was out of the bank?

Mr. LYON. As far as I know.

Senator SARBANES. So the references he was making, as you understood it, involved the savings and loan.

Mr. LYON. As I understood it, yes.

Mr. BEN-VENISTE. You well understood the difference between a savings and loan and a bank?

Mr. LYON. Yes.

Mr. BEN-VENISTE. Even though Mr. McDougal seemed to like the name "Madison," there was a big difference between these two institutions?

Mr. LYON. There's a great difference between the two institutions. And incidentally, you have been more than fair to me. But go ahead.

Mr. BEN-VENISTE. Thank you.

In connection with the conversation that you had with him, there was no doubt in your mind that he was talking to you about the savings and loan that he was running, Madison Guaranty Savings & Loan.

Mr. LYON. Right. As far as I knew at that time, and I believe that I'm correct, he was out of the bank at Kingston.

Mr. BEN-VENISTE. Whether or not you're telescoping in your own mind is going to be something that others will look at this testimony and say nobody's accusing you of venality here. But you have been questioned at length by various people, may have suggested information to you. You may have gotten this all in the same line.

What we know is that Mrs. Clinton was not retained by Madison Guaranty Savings & Loan, and her firm was not retained, until April of 1985.

Let me ask you this. You know Mr. McDougal is the kind of a guy who had six ideas a minute, and he would run these by you and other people from time-to-time. You knew that he was constantly generating new ideas and deals, correct?

Mr. LYON. Mr. McDougal had about 20 ideas a minute.

[Laughter.]

Mr. BEN-VENISTE. He was, is it fair to say, an impulsive kind of a guy. If he had something on his mind, he'd get it out.

Mr. LYON. Right.

Mr. BEN-VENISTE. If he had an idea, he was going to bounce it off somebody; sometimes you, clearly others. Correct?

Mr. LYON. I would think so, yes.

Mr. BEN-VENISTE. The notion of Mr. McDougal sitting quietly with some idea about financing, and waiting a year and a half to talk to anybody about it, would not fit your profile of McDougal's character.

Mr. LYON. No.

Mr. BEN-VENISTE. And indeed, we have the testimony of Mr. Latham, who said that this matter regarding preferred stock was not discussed until early 1985 at the earliest, and that is at page 1 of the RTC interview with John Latham, July 12, 1995.

That's all I have, Mr. Chairman.

The CHAIRMAN. Again, Mr. Lyon, we want to thank you for your cooperation. We stand in recess until Thursday at 10 a.m.

[Whereupon, at 5:10 p.m., the Committee was recessed, to reconvene at 10 a.m. on Thursday, January 25, 1996.]

[Appendix supplied for the record follows:]

Knox 6 copies

GOVERNOR'S OFFICE

June

RE: Nov / Dec Appnts.

DSTCC are probably inpt. -
 talk with Brady - know him
 visit with Bob Young - same
 on Bd of Health.

② Steam Presentation (?) I
 assume recent appnts. have
 care of.

③ Soil Classifier -
 Major Rutledge of Fay'sville is
 friend - he was one calling for
 Don McGuire - probably should
 reappnt. if he wants it. (over)

DKSN013314

- ④ #BC - ~~Watters~~ is acc. to 60V - but, confirm.
- ⑤ Benny Bel - ask McDougall.
- ⑥ Dr. Mung on Health Bel is my friend but not supportive (at this time) of Long so no need to react. If choice is from Fey's list I'd go for Dr. Jay McDonald.
- ⑦ Anticipate support from Nature for F. Rodgers to Plant Bel.

DKSN013315

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D. C.

In the Matter of

MADISON BANK AND TRUST
KINGSTON, ARKANSAS

(INSURED STATE NONMEMBER BANK)

NOTICE OF CHARGES
AND OF HEARING

FDIC-83-3b

The Federal Deposit Insurance Corporation ("FDIC"), being of the opinion that Madison Bank and Trust, Kingston, Arkansas ("Bank") has engaged and is engaging in unsafe or unsound practices and that the Bank has violated and is violating certain laws of the State of Arkansas, and certain provisions of the Federal Reserve Act and regulations promulgated thereunder as made applicable to insured state nonmember banks, is instituting this proceeding for the purpose of determining whether an appropriate order should be issued against the Bank under the provisions of section 8(b)(1) of the Federal Deposit Insurance Act ("Act") (12 U.S.C. § 1818(b)(1)). The FDIC issues this NOTICE OF CHARGES AND OF HEARING under the provisions of the Act and the FDIC's Rules of Practice and Procedures (12 C.F.R. Part 308). In support of this action, the FDIC alleges:

1. (a) The Bank, a corporation existing and doing business under the laws of the State of Arkansas and having its principal place of business at Kingston, Arkansas is and has been at all times pertinent to this proceeding an insured State nonmember bank. The Bank, therefore, is subject to the Act (12 U.S.C. §§ 911, et seq) and the Rules and Regulations of the FDIC (12 C.F.R. Chapter III).

(b) The FDIC has jurisdiction over the Bank and the subject matter of the proceeding.

2. As of September 8, 1982:

2-1

HOUSE W/W RPT. 5551

JCH000367

- (a) The Bank's total capital and reserves equalled \$596,100;
- (b) The Bank's adjusted capital and reserves equalled \$194,500;
- (c) The Bank's ~~adjusted-total assets~~ equalled \$7,494,100;
- (d) The Bank's total deposits equalled \$6,650,500; and
- (e) The Bank's total loans equalled \$4,518,700.

3. The Bank has engaged and is engaging in banking practices that are unsafe or unsound within the meaning of section 8(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. § 1818(b)(1)) and has violated certain laws of the State of Arkansas and certain provisions of the Federal Reserve Act and regulations promulgated thereunder as made applicable to insured state nonmember banks. In particular,

(a) The bank has an excessive and disproportionately large volume of poor quality assets in relation to its total capital and reserves.

- (1) Total classified assets as of September 8, 1982 are \$663,800 including \$235,900 classified Doubtful and \$83,900 classified Loss.
- (2) Total classified assets as of September 8, 1982 are equal to 11.1 percent of total capital and reserves.

(b) The Bank has an excessive and disproportionately large volume of loans to borrowers residing or conducting business outside of its defined trade area, many of which have been granted without protective collateral, are lacking in supporting technical documentation, and some of which represent poor credit risk.

- (1) Total loans to borrowers residing or conducting business outside of the defined trade area as of September 8, 1982 are \$1,302,100, representing

-)-

223.01 of the Bank's equity capital.

- (2) Total loans to borrowers residing or conducting business ~~outside of the defined trade area~~ advanced on an unsecured basis amount to \$455,200 as of September 8, 1982.
- (3) Loans to borrowers residing or conducting business outside of the defined trade area contain \$562,100 in loans ~~scheduled for technical exceptions~~ as of September 8, 1982.
- (4) As of September 8, 1982 loans to borrowers residing or conducting business outside the trade area in the amount of \$162,600 are classified Substandard.

(c) The Bank has failed to maintain an adequate reserve for loan losses based on the volume and quality of its loan portfolio.

- (1) As of September 8, 1982 the Bank's Valuation Reserve for loans was \$12,400.
- (2) As of September 8, 1982 loans classified Loss totaled \$24,100; loans classified Doubtful totaled \$235,900; and loans classified Substandard totaled \$311,600.
- (3) As of September 8, 1982 unclassified loans totaled \$3,967,100.

(d) The Bank is being operated with an inadequate level of capital protection in view of the volume and quality of assets held. In part, this inadequate capital level is evidenced by the fact that as of September 8, 1982, the Bank's adjusted capital and reserves of \$394,500 was 5.3 percent of its adjusted total assets of \$7,494,300. Adversely classified assets not considered in computing adjusted capital and reserves totaled \$462,100 and these adversely classified assets ~~equalled~~ 117.1 percent of adjusted capital and reserves.

HOUSE W/W RPT. 5553

VCH006069

(e) The Bank has followed hazardous lending and lax collection practices, and has failed to adhere to prudent loan practices as evidenced by, among other things, the following deviations from its own written lending policies:

- (1) Loans of \$50,000 or more have not been submitted to the Bank's board of directors for approval.
- (2) Loans to closely held corporations have not been guaranteed by the principals.
- (3) Loans have been made or renewed without current financial information being required when applicable.
- (4) Loans have been made to borrowers residing or conducting business outside of the Bank's defined trade area without approval of the discount committee when applicable, and
- (5) Loans have been made to businesses for working capital with maturities exceeding the suggested 90-day period.
- (6) Loans totalling \$722,000, which represent 15.9% of total loans, are delinquent as to principal and/or interest as of September 8, 1982

(f) As of September 8, 1982, the Bank had committed certain violations of laws, rules and regulations as follows:

- (1) The Bank has extended credit to Jack Files and Hudgins, Inc. in amounts which exceed the statutory maximum lending limit as provided in Section 67-507 of Arkansas State Banking Statutes.
- (2) The Bank has extended credit to Directors Julia A. Baldrige, Felix S. Brashears, II, Gary Easterling,

JCH000070

HOUSE W/W RPT. 5554

James B. McDougal, Susan H. McDougal, and Stephen A. Smith, and their related interests which lacks required approvals and/or exceeds the limitations as provided by Sections 215.4 and 215.2 of the Federal Reserve Board's Regulation O as made applicable to insured State nonmember banks by 12 U.S.C. § 1818(j)(2). In addition, the Bank has failed to maintain records as required by Section 215.7 of the Federal Reserve Board's Regulation O, and has failed to submit an annual report as required by Section 215.10 of that regulation.

- (3) The Bank has extended credit to affiliated organizations, Riverwood Farms, Inc., Great Southern Land Company, Inc., Kings River Land Company, Inc., Madison Guaranty Savings and Loan Association, Inc., Madison Properties, Inc., Park Place, Inc., and Whitewater Development Company, Inc. which do not meet collateral requirements and/or exceed the limitations provided by Section 23A of the Federal Reserve Act as made applicable to insured State nonmember banks by 12 U.S.C. § 1818(j)(1).

(g) The Bank has allowed excessive concentrations of credit in its loan account. Credit totaling \$1,875,300, or 321.2 percent of the Bank's total equity capital has been loaned to borrowers, directly and indirectly, as follows:

- (1) Borrowers residing outside of the Bank's defined trade area (223.0% of total equity capital).

- 6 -

- (2) Hudgins, Inc. (49.4% of total equity capital),
- (3) James B. and Susan McDougal (48.8% of total equity capital), and
- (4) C. E. Ransom (17.2% of total equity capital).

4. The Bank's board of directors failed to provide adequate supervision over the active officers of the Bank to prevent the above described unsafe or unsound banking practices and violations of law.

5. Notice is hereby given that a hearing will be held at Fayetteville, Arkansas commencing within 60 days from the date of service on the Bank of this NOTICE OF CHARGES AND OF HEARING for the purpose of taking evidence on the charges hereinbefore specified in order to determine:

Whether an appropriate Order should be issued under the Act requiring Madison Bank and Trust, Kingston, Arkansas to cease and desist from the unsafe or unsound practices and violations of laws herein specified, or any of them, or to take affirmative action to correct the conditions resulting therefrom, or both.

6. The hearing referred to in Paragraph 5 is to be held before an Administrative Law Judge to be appointed by the U.S. Office of Personnel Management pursuant to Section 3344 of Title 5 of the United States Code. The hearing will be private, unless the FDIC shall determine that a public hearing is necessary, to protect the public interest, and in all other respects will be conducted in compliance with the provisions of the Act and the FDIC's Rules of Practice and Procedures. The Bank is hereby directed to file an answer to this NOTICE OF CHARGES AND OF HEARING within 20 days as provided by section 308.06 of the Rules of Practice and Procedures of the FDIC (12 C.F.R. § 306.06).

HOUSE W/W RPT. 5556

VCH000572

By direction of the Board of Review pursuant to delegated authority.

Dated: *January 5, 1983*


Alag J. Kaplan
Deputy Executive Secretary

00595-R

HOUSE W/W RPT. 5557

VCH000373



Madison Bank and Trust

101 PUBLIC SQUARE - KINGSTON, ARKANSAS 72743

June 5, 1984

RECEIVED

JUN 6 1984

STATE BANK DEPT.

Mr. Marlin Jackson,
State Bank Commissioner
#1 Capitol Mall
Little Rock, AR 72201

Dear Mr. Jackson:

Enclosed is our June progress report showing the loans that were listed in the Examination Report of June 27, 1983. We have broken them down showing the balance, the current balance, and what we are doing with them.

As you can see, the reduction in principal is considerably less than what we started with. We feel that we are making very good progress in getting loans paid off or a reduction in principal.

If we can be of further assistance, please let us know.

Sincerely,

Gary W. Bunch

Gary W. Bunch
President

cc: FDIC

ARKANSAS

STATE BANK
DEPARTMENTTower Bldg. - Suite 500
323 Center Street
Little Rock, Arkansas 72201-2510Martin O. Jackson
Commissioner

November 2, 1985

Mr. Charles O. Campbell
Vice President
Security Bank
P. O. Box 670
Paragould, Arkansas 72453Re: Note No. 957-585 - Bill Clinton
Note balance - \$15,200.00; Accrued interest - \$2,322.42

Dear Charles:

I am enclosing the Extension Agreement which Governor Bill Clinton signed yesterday.

It is my understanding that Jim McDougal, a close friend as well as business associate of Governor Clinton, is to forward to you a check for \$2,322.42 representing the accrued due on the note.

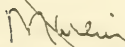
In discussing this matter with Jim today via a his telephone, he indicated that he intended to make a \$4,000.00 principal reduction in addition to the interest payment.

After making the appropriate approval of the Extension Agreement, please return the appropriate copy to me and I will personally deliver it to Governor Clinton. Also, please return copies of the receipt to me.

So that Jim McDougal may know that the proper credit has been given, please provide Jim with a copy of the receipt for the payment of the interest and principal along with a copy of the Extension Agreement.

I trust this meets with your approval and that it will soon remove the note from the past due list.

Sincerely,


Martin O. Jackson
Bank Commissioner

MOJ/s

Enclosure

CONFIDENTIAL

**CONFIDENTIAL - PRODUCED BY THE RTC TO THE
HOUSE COMMITTEE ON BANKING AND FINANCIAL
SERVICES**



STATE OF ARKANSAS
OFFICE OF THE GOVERNOR
State Capitol
Little Rock 72201

Bill Clinton
Governor

CONTACT: Kay Gaines 371-8035

February 28, 1984
FOR IMMEDIATE RELEASE:

Governor Bill Clinton's office today announced the following appointments:

FRANKLIN COLLIER, Augusta--State Banking Board. Collier replaces James Atkins, Little Rock, whose term expired. Collier's term expires December 31, 1988.

JAMES ATKINS, Little Rock--State Banking Board. Atkins replaces William C. Lyon, Fordyce, who resigned. Atkins' term expires December 31, 1988.

ADELINE RUTLEDGE, Batesville--Independence County Quorum Court. Rutledge replaces George A. Rutledge, Batesville, who is deceased. She will serve until the next election.

ROCHELLE BETTON, Little Rock--Educational Television Commission. Betton replaces Emmett Smith, Paragould, whose term expired. Betton's term expires March 23, 1991.

WILLIAM P. DAUGHERTY, Little Rock--Savings and Loan Association Board. Daugherty replaces James L. DeLoach, Osceola, who resigned. Daugherty's term expires January 14, 1989.

MARVA DAVIS, Little Rock--Community Based Rehabilitation Commission. Davis replaces Darrel F. Brown, Little Rock, who resigned. Davis' term expires July 1, 1985.

Governor Clinton's office also announced the following reappointments:

SHERMAN CULLUM, Fisher--Plant Board. Fisher's new term expires January 25, 1986.

DR. WIN THOMPSON, Jonesboro--Arkansas Science and Technology Authority. Thompson's new term expires January 14, 1990.

JEROME MCGEE, Jonesboro--Arkansas Science and Technology Authority. McGee's new term expires January 14, 1990.

#

DKSN026346

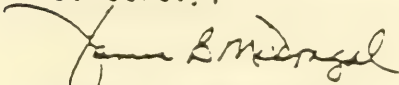
December 12, 1984

Ms. Betsy Wright
Governor's Office
State Capitol
Little Rock, Arkansas 72201

Dear Betsy:

Governor Clinton has made a commitment concerning this bill which I need to discuss with you at your convenience. Best wishes.

Sincerely,



James B. McDougal

JBMCO/rm
Enclosure

STRATEGIC PLAN OF ACTION FOR ADVERSELY CLASSIFIED ASSETS Loans to Borrowers Residing Outside the Bank's Normal Trade Territory-Concentration				DATE OF THIS REPORT June 17, 1983		DATE OF EXAMINATION June 27, 1983	
OBLIGOR'S NAME	AMOUNT ORIGINALLY CLASSIFIED	BALANCE AS OF DATE OF THIS REPORT	ACTION TO BE UNDERTAKEN (INDICATE TIME FRAME)	DATE OF THIS REPORT June 17, 1983	DATE OF EXAMINATION June 27, 1983	DATE OF ACTION TAKEN BY OBLIGOR AND/OR BANK SINCE DATE OF EXAMINATION	
Hallett, James L. Little Rock, AR	5,000	- 0 -				PAID OFF	
Bogren, Paul D. & Taylor, Wendy D. Fayetteville, Arkansas	10,324	-6,524 6,800	Require regular amortization			Paid \$4,000 on account	
Rodham, MILEY Little Rock	26,192	- 0 -	To be paid within 60 days			-Current- PAID OFF	
Rush, Charles Fen Ridge, Arkansas	2,000	- 0 -	file suit			Charge off	
Scott, Sam & Yarbrough L. D. Rogers, Arkansas	1,125	-1,125 900	Require payoff at maturity			Current	

(6) to you that there was some big contributor involved.
 (7) That was from Mr. McDougal.
 (8) THE WITNESS: That came from Mr. McDougal.
 (9) sir. Governor Clinton was very nice. He asked me to
 (10) resign.

(11) BY MR. GICALE:

(12) Q All right. And so that we are clear, could
 (13) you restate this?

(14) What was it exactly the governor said to
 (15) you?

(16) A The governor called me over at the bank and
 (17) he told me that Jim had indicated to him that I would
 (18) resign if he asked me to. And that he appreciated it
 (19) very much because he really needed the position to
 (20) fill an obligation.

(21) He thanked me for serving and asked that I
 (22) send a letter in, and I did. And that was that.

(23) Q Now when you say that he called you at the

Page 62

(1) bank, which bank did he call you at?

(2) A He called me at the Pine State Bank.

(3) Q Now did McDougal tell you that the governor
 (4) was going to be calling you on this?

(5) A He told me, yes, the day that he asked me
 (6) to resign. He told me that the governor would call.

(7) Q The day that McDougal asked you to resign,
 (8) he told you that the governor would call.

(9) A That's correct, that the governor would ask
 (10) me to resign. He didn't say call.

(11) Q Did the governor make any reference to
 (12) having you move to the state savings and loan board?

(13) A No, sir, he did not. And if you really
 (14) think about it, it's inconceivable to me.

(15) A banker, a person that's a banker, is
 (16) completely different from a person that runs a
 (17) savings and loan.

(18) They don't like each other.

(19) That he would even think that any banker
 (20) would serve on that board.

(21) Q Did the governor make any reference to the
 (22) preferred stock offering from Madison Guaranty that

Page 63

(1) McDougal talked to you about?

(2) A None whatsoever, sir.

(3) Q Did you have any further conversation with
 (4) the governor at that point?

(5) A No, sir.

(6) Q Did you submit your resignation shortly
 (7) thereafter?

(8) A Yes, sir.

(9) Q Did you talk to McDougal about the call you
 (10) had from the governor?

(11) A No, sir.

(12) Q Did you ever talk to McDougal again about
 (13) the resignation or the request of the governor to
 (14) resign?

(15) A I did not.

(16) MR. MAYES: Please.

(17) MR. GICALE: I'm sorry. Do you want to go

(18) off the record for a minute?

(19) Do you want to go off the record?

(20) MR. MAYES: Yes.

(21) MR. GICALE: Okay.

(22) (Discussion off the record.)

Page 64

(1) BY MR. GICALE:

(2) Q As a member of the bank board, did you have
 (3) any responsibility for savings and loans?

(4) A No.

(5) Q So you would not have had any
 (6) responsibility for Madison Savings and Loan.

(7) A No, sir.

(8) Q Madison Guaranty. I'm sorry.

(9) A Whatever. Any of that stuff.

(10) Q You did not have oversight responsibility
 (11) for that bank?

(12) Correct?

(13) A I do want to say that Mr. Mays is right.

(14) I'm really not sure what board, I've forgotten. But I
 (15) do know it concerned savings and loan. I do not
 (16) think

(17) it was the securities board or what have you.

(18) I don't know.

(19) Q But the point is that Mr. McDougal wanted

(20) you to resign your position to move to some other

(21) position which would allow you to make a decision on

(22) his preferred stock offering.

(23) Is that correct?

Page 65

(1) A Yes, sir, that's right.

(2) Q Were you on the bank board at the point in
 (3) time when McDougal wanted Madison Bank and Trust,
 (4) which was the Bank of Kingston, I believe?

(5) A Yes, sir. I was on the bank board at the
 (6) time that they bought the Kingston Bank.

(7) Q Were you aware of a cease and desist order

(8) on that bank, the Bank of Kingston, that the Federal

(9) Home Loan Bank Board had with that bank?

(10) A Yes, sir, I was.

(11) Q Were you involved in that at all?

(12) A No, not really. The bank commissioner is
 (13) the one that issued that order.

(14) Q The state bank commissioner?

(15) A Yes, sir.

(16) Q Who was that at the time?

(17) A Martin Jackson. And I say Martin Jackson.

(18) I believe that's who it was.

(19) Q Do you recall why a cease-and-desist order

(20) was issued on that bank?

(21) A Yes, sir.

(22) Q What were the reasons?

Page 66

(1) A They were loaning too much money, mainly to
 (2) politicians, without collateral.

(3) They were loaning money from out of the
 (4) territory of the bank.

(5) Q Do you recall which politicians they were
 (6) lending the money to without collateral?

600

MEMORANDUM

McDougal/Clinton
98

February 7, 1985

TO: Governor Bill Clinton

FROM: Jim McDougal

Kathy called yesterday to ask for my recommendations for two people to fill the vacancies on the State Savings and Loan Board.

For the industry position from the 2nd Congressional District, I recommend John Latham, who is chairman of the board of Madison Guaranty Savings and Loan Association. Mr. Latham is a CPA and a licensed attorney. He is a major contributor to your campaign. His board of directors is 50% Black, giving his institution the largest minority representation of any financial institution in the state.

For the consumer position from the 4th Congressional District, I recommend Dr. Jerry Kendall of Camden. Dr. Kendall is a popular figure at Camden. His wife, Nancy from Magnolia, is widely and favorably known. Their complete support of your administration is a certainty.

Bill, we are down to only about 15 state chartered savings and loan institutions and I am about the only one around who has any interest in this board.

JRM/ss

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HOUSE

CLINTON APPOINTMENTS

Page Two

March 4, 1988

Columbia ETHEL WRIGHT, Magnolia--State Board of Cosmetology.

Wright replaces Ica B. Thomas, Pine Bluff, who resigned.

Wright's term expires January 15, 1989.

Columbia DONNA PITTMAN KINNAIRD, Magnolia--Arkansas State Plant Board. Kinnaird replaces Dick Enderlin, Conway, who resigned. Kinnaird's term expires June 30, 1985.

Miss RALPH WILSON, JR., Osceola--Natural Heritage Commission. Wilson replaces Ray Fitzhugh, Augusta, whose term expired. Wilson's term expires January 14, 1994.

Little Rock JOHN LATHAM, Little Rock--Savings and Loan Association Board. Latham replaces Ike Carter, Benton, who resigned. Latham's term expires January 14, 1987.

Camden DR. JERRY KENDALL, Camden--Savings and Loan Association Board. Kendall replaces George McClure, Jr., Malvern, whose term expired. Kendall's term expires January 14, 1990.

Governor Clinton also announced the following

reappointments:

Nashville GEORGE STEEL, JR., Nashville--Judicial Ethics Committee. Steel's new term expires December 21, 1988.

Texarkana LYNN LOWE, Texarkana--Red River Commission. Lowe's new term expires January 14, 1993.

Camden EUNICE PLATT, Camden--Arkansas Waterways Commission. Platt's new term expires January 14, 1992.

DKSN025966

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, JANUARY 25, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Today the Committee will hear from Beverly Bassett Schaffer, the former Arkansas Securities Commissioner, who was in charge of regulating the Madison Guaranty S&L from 1985 until 1989 when Madison was taken over by the Federal Savings & Loan Insurance Corporation.

The Committee is now investigating the operations of Madison S&L, a failure of which cost the American Taxpayer \$60 million. Madison was run by Mr. Jim McDougal, the Clintons' Whitewater partner.

As I said at Tuesday's hearing, the Clintons and the McDougals were supposed to be 50/50 partners in Whitewater, but we now know that the McDougals put far more money into Whitewater than the Clintons. In fact, until mid-1986 the McDougals put more than \$158,000 into Whitewater, while the Clintons put in at most \$35,000.

The Committee is now investigating whether Governor Clinton provided any special benefit to Jim McDougal or Madison. Did Jim McDougal obtain improper influence with the Governor or his administration?

This past Tuesday the Committee heard William Lyon, a former Arkansas Bank Regulator, testify that then-Governor Clinton, at Mr. McDougal's request, asked Mr. Lyon to resign from the Arkansas Bank Board. Mr. Lyon testified that he was asked to resign after he refused to become Mr. McDougal's puppet on the State S&L Board, and particularly to approve Madison's issuance of preferred stock.

Today the Committee will examine Ms. Schaffer's oversight of Jim McDougal's Madison S&L. We now know from the Rose Law

Firm billing records recently discovered under rather unusual circumstances in the Book Room of the President and Mrs. Clinton's residence at the White House, that Mrs. Clinton while a lawyer at the Rose Law Firm directly communicated with Ms. Schaffer on behalf of Madison.

The Committee will look into why Mr. McDougal was allowed to run the Madison S&L into the ground at a cost of \$60 million to the taxpayers.

These are some of the issues that the Committee will address today.

Before turning to Senator Sarbanes for any comments he would like to make, I am going to ask our three witnesses to stand for the purposes of taking the oath.

[Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?]

Ms. SCHAFFER. I do.

Mr. BRADY. I do.

Mr. HANDLEY. I do.

The CHAIRMAN. Thank you.

After Senator Sarbanes or his colleagues make their remarks, I will then extend to Ms. Schaffer, Mr. Brady, and Mr. Handley the opportunity of making any remarks or any statement that they would like to give to the Committee.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, in view of the report that was submitted earlier this week with respect to the projected work timetable of this Committee, I would like to inquire of the Chairman what work program he sees before us, for instance, for next week, the week after, and the following week?

It is my strongly held view that this Committee ought to intensify its hearing schedule. We have met just 2 days this week and 2 days last week. In 1987, the Iran-Contra Committee held 21 days of hearings between July 7th and August 6th, and, in fact, this Committee this summer held 13 days of hearings between July 18th and August 10th.

It seems to me, given Resolution 120 and the February 29th date contained therein, it is incumbent on this Committee to move very expeditiously in holding these hearings.

Now, we could meet 4 or 5 days a week; we have done that before, as we now move into this Arkansas phase. I have to say to the Chairman, we have had difficulty getting from the Majority staff any real work schedule. The deposition schedules are done about a week at a time. We have no laid-out deposition schedule, and we have no laid-out hearing schedule. Are there going to be hearings next week?

The CHAIRMAN. I hope that we would have at least 3 days of hearings next week and the following 2 weeks. That would give us at least approximately 9 days of hearings. I think that is a very ambitious schedule, given the fact that many of the witnesses have not been interviewed. Some we may not even have an opportunity to interview.

That would probably encompass the work weeks of Tuesday, Wednesday, and Thursday, to help accommodate those Members who may have to go home over the weekend, et cetera. So I think it is an ambitious one, but we will attempt to get in, at least, 9 hearing days over the next 3 weeks.

Senator SARBANES. Well, it would help in projecting the work schedule since apparently that is a plan in mind, if we knew who you intended to have in the hearings, and if there were some effort to work out a joint work program. I mean, do we know who is going to testify at these hearings at this point?

The CHAIRMAN. Again, we're trying to accommodate the various witnesses' schedules, so while we do have some idea—and I believe we have begun the process of scheduling next week's and the following week's witnesses and certainly the Majority with the Minority Counsels will continue to work together. And I will ask them to do so.

I am in the position to answer my colleague's question only because, prior to coming down this morning, I reviewed with our Chief Counsel and others our ability to conduct these hearings, and what witnesses we would be able to bring in, and what their intention is. Now some of them we may not be able to get in on a particular day, but it does look as if we can have 9 days of hearings in the course of the next 3 weeks.

Senator SARBANES. I think it is imperative, then, that there be a meeting between the Majority and the Minority to review the proposed hearing schedule: Who you plan to call; to review the deposition schedule; and to have some sense of what the lay of the land is. We ought to be able to do that and, if we are going to do our work properly, it seems to me incumbent upon us to do that.

The CHAIRMAN. We have no problem doing that. I would suggest after today's meeting we will do that, and that Counsels also can begin, and Associate Counsels, to lay out where we are going to attempt to go—recognizing that there always is the possibility that a witness, or a particular attorney at a particular time may ask for a certain accommodation. But it is the intent of the Chair at this point to move forward as expeditiously as possible and to have I think a rather ambitious work schedule. Given the fact that we cannot control all of the witnesses' times and appearances, and that we have and will continue to attempt to recognize the needs of people; this is our intent and we are going to proceed that way.

Senator SARBANES. I think we should have that discussion on the ambitiousness of the work schedule, I would like to review that with the Chairman. Today is Thursday, do we know the witnesses for Tuesday's hearing?

The CHAIRMAN. I will attempt during a break at lunch to see how many of the witnesses we have contacted and what the precise schedule is for Tuesday. And if we can go further in terms of spelling out Wednesday and Thursday, we would be happy and we should work with the Minority in making that information available. Certainly this is a matter of scheduling. There are some difficulties, but we will certainly share these with the Minority.

Ms. Schaffer, do you have a statement?

**SWORN TESTIMONY OF BEVERLY BASSETT SCHAFFER, ESQ.
FORMER COMMISSIONER
ARKANSAS SECURITIES DEPARTMENT**

Ms. SCHAFFER. No.

The CHAIRMAN. Mr. Brady.

**SWORN TESTIMONY OF WILLIAM B. BRADY
FORMER ATTORNEY
ARKANSAS SECURITIES DEPARTMENT**

Mr. BRADY. No, Your Honor.

The CHAIRMAN. Mr. Handley.

**SWORN TESTIMONY OF CHARLES F. HANDLEY
ASSISTANT COMMISSIONER
ARKANSAS SECURITIES DEPARTMENT**

Mr. HANDLEY. No, sir.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Let me suggest you move the mikes a little closer.

Ms. Schaffer, during the period of time you were the Arkansas Securities Commissioner in the mid-1980's, you had responsibility to supervise savings and loans?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. One of those was the Madison Guaranty Savings & Loan?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. You were familiar with the fact that the Governor, Mr. Clinton, had a relationship with Mr. McDougal?

Ms. SCHAFFER. Well to the extent that I knew what their relationship was, what I thought was that they were personal friends—a friendship from politics, and a personal friendship of a nature like he had with many other people in the State; a political supporter, and that's about all I—I mean, that is all that I knew about Jim McDougal's relationship with Bill Clinton.

Mr. CHERTOFF. What was the basis of your knowledge about this relationship?

Ms. SCHAFFER. The basis?

Mr. CHERTOFF. Yes. Did the Governor talk to you about it?

Ms. SCHAFFER. No, he didn't—he never talked to me about Jim McDougal.

Mr. CHERTOFF. Who talked to you about it?

Ms. SCHAFFER. Nobody had to talk to me about it. I think——

Mr. CHERTOFF. How——

Ms. SCHAFFER. Well, if you were paying attention, you could have determined that Jim McDougal and Bill Clinton were personal friends. I think my husband told me that from politics over the years. I was aware that Jim McDougal told other people that they were friends. I was aware that he told people in the Securities Department before I ever got there that they were friends. Just by listening.

Mr. CHERTOFF. Did you believe they were friends?

Ms. SCHAFFER. My impression was that Jim McDougal exaggerated his relationship with Bill Clinton; that he exaggerated what

the relationship was, and may have talked about the relationship in ways that I don't necessarily know that Bill Clinton would agree with.

Mr. CHERTOFF. Did you—

Ms. SCHAFFER. My impression was that he bragged about it, and that he wasn't necessarily to be believed as to what the relationship really was.

Mr. CHERTOFF. Did you believe they were friends?

Ms. SCHAFFER. I believed they were friends.

Mr. CHERTOFF. Did you believe the Governor took a special interest in what happened to Mr. McDougal?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Did you know that Mrs. Clinton represented Mr. McDougal, or the bank, the savings and loan, with respect to a matter that came before you as Commissioner?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. You knew that because Mrs. Clinton called you on that?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. Now, I want to be quite clear on this. You did not have a belief or an understanding that the Governor had any particular interest in what happened to Mr. McDougal?

Ms. SCHAFFER. A particular interest?

Mr. CHERTOFF. Yes. Was it a matter of interest to him—to the Governor—what happened to Mr. McDougal and his bank?

Ms. SCHAFFER. No, I don't know that it was of a particular interest. I think Bill Clinton was probably interested in a lot of people who had business before our department. I don't think—at the time I'm sure I didn't think of Mr. McDougal as some special individual; as far as Bill Clinton having an extraordinary interest in him, no.

Mr. CHERTOFF. Do you remember when in June 1986 it became apparent the Federal regulators wanted to have Mr. McDougal removed from his position of authority at the savings and loan?

Ms. SCHAFFER. Yes, I do.

Mr. CHERTOFF. Do you remember, in fact, you went to a meeting of the Federal Home Loan Bank Board in Dallas in July 1986, for the purpose of discussing the fact that Mr. McDougal would have to be removed?

Ms. SCHAFFER. Yes, I did.

Mr. CHERTOFF. You knew about that in advance?

Ms. SCHAFFER. Yes, I did.

Mr. CHERTOFF. Did you feel a need to let Mr. Clinton know about the fact that Mr. McDougal was going to be removed before that meeting took place?

Ms. SCHAFFER. Well, I don't know that Mr. Clinton was told that Mr. McDougal would be removed from the savings and loan. I—

Mr. CHERTOFF. Did you try—Finish your answer.

Ms. SCHAFFER. I don't know that Mr. Clinton was told. I—

Mr. CHERTOFF. Did you try to tell him?

Ms. SCHAFFER. I did not tell Bill Clinton. I had a conversation with Sam Bratton.

Mr. CHERTOFF. Who is Sam Bratton?

Ms. SCHAFFER. Sam Bratton was the liaison between the Governor's office and the Arkansas Securities Department. He was the

person in the Governor's office to whom we reported regularly on matters, you know, that the department had jurisdiction over. He was our liaison. He is the person that I talked to and told when we closed our other savings and loans in 1985. He is the person, if I had a problem that needed to be discussed, I was to talk to.

Mr. CHERTOFF. He was your contact with the Governor, right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. Mr. Bratton, Sam Bratton?

Ms. SCHAFFER. That's right.

Mr. CHERTOFF. You talked to him over the time you were Commissioner about Madison Savings & Loan; right?

Ms. SCHAFFER. And all of the other savings and loans that we had jurisdictions over.

Mr. CHERTOFF. You talked to Sam Bratton shortly before the meeting at which Mr. McDougal was removed?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. You told him there was going to be a meeting?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. You told him that Mr. McDougal was in trouble?

Ms. SCHAFFER. What I told him was—I told Sam essentially the same thing—gave him the same notice I gave the year before on another savings and loan that we closed. Which is that it appeared to me that this savings and loan was not going to survive.

Mr. CHERTOFF. Why did you tell Mr. Bratton about the fact that Mr. McDougal was going to be removed from the savings and loan?

Ms. SCHAFFER. Well, I don't know that I told him that. I wrote—my communication with Sam was this savings and loan is in trouble. This savings and loan, as far as I'm concerned, is going to need to be closed.

Mr. CHERTOFF. Why did you tell him that?

Ms. SCHAFFER. For the same reason I told him the year before about Guaranty Savings & Loan in Harrison, Arkansas, because I wanted them to know that a savings and loan in the State might well be getting ready to be closed and what could happen, the results—

Mr. CHERTOFF. Ms. Schaffer—

Ms. SCHAFFER. Let me finish—and I was also concerned, I had had press calls.

Mr. CHERTOFF. Press calls?

Ms. SCHAFFER. Yes, I had. You know, Arkansas is a small State and it doesn't take long for information to get around.

Mr. CHERTOFF. So why did you call—

Ms. SCHAFFER. I—

Mr. CHERTOFF. Why did you want the Governor to know that Madison Guaranty Savings & Loan was in trouble, and that—

Ms. SCHAFFER. May I finish?

Mr. CHERTOFF. —there was going to be a meeting about it?

Ms. SCHAFFER. May I finish?

Because I had had press calls that week asking me if Madison Guaranty was going to be closed; that they had heard Madison Guaranty may be closed. The word was starting to get out that Madison was in trouble.

Mr. CHERTOFF. That would explain why you would call the press office, but why would you call the Governor's office?

Ms. SCHAFFER. I didn't call the press office. The press office? What press office?

Mr. CHERTOFF. Why did you contact Mr. Bratton to have him notify the Governor?

Ms. SCHAFFER. I'm trying to finish. OK?

Press calls—the press calling me and asking me, “Is Madison Guaranty going to be closed; we heard it?” They were down in the lobby of Madison Guaranty.

My concern with them finding out some other way, like the press calling the Governor's office, was I didn't want them to hear about it that way. I did not. And I was concerned that Mr. McDougal was getting word from those same press people, or other people, that something was afoot, or something may be fixing to happen, that they were panicking.

I really wanted to convey to Sam that this was very serious and that they should not have anything to do with Jim McDougal.

Mr. CHERTOFF. So you wanted to warn him off having anything to do with Jim McDougal?

Ms. SCHAFFER. That's right.

Mr. CHERTOFF. Had you warned him about Jim McDougal previously? The Governor?

Ms. SCHAFFER. My impression was that Jim McDougal was the kind of person who would call up the Governor's office and very likely or very possibly go over there and try to involve the Governor's office—it could happen—in what was happening to his savings and loan, or what might—I didn't want him to have anything to do with him.

Mr. CHERTOFF. Isn't it a fact that the reason you contacted Mr. Bratton was because you wanted to have a discussion with Mr. Bratton and the Governor about Madison Guaranty's trouble because you knew about the Governor's relationship with McDougal?

Ms. SCHAFFER. I did know about the Governor's relationship, yes; that's why. And what I wanted to say to him was: This is not something anybody ought to talk about. This is not something you ought to have anything to do with. This is—you know, stay out of it. Lock the doors.

Mr. CHERTOFF. You wrote a note to Mr. Bratton?

Ms. SCHAFFER. Yes, I did.

Mr. CHERTOFF. When did you see the note for the first time since 1986?

Ms. SCHAFFER. Oh, probably sometime in the fall of last year.

Mr. CHERTOFF. In the fall of last year?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. Who showed you the note?

Ms. SCHAFFER. The Independent Counsel.

Mr. CHERTOFF. All right. Let's put the note up. It is No. CCBW 884. I guess this is your handwriting; right?

Ms. SCHAFFER. It is.

Mr. CHERTOFF. It is to “Sam”; that's Sam Bratton; right?

Ms. SCHAFFER. That's right.

Mr. CHERTOFF. The note reads as follows: “Madison Guaranty is in pretty serious trouble. Because of Bill's relationship w/[ith] McDougal, we probably ought to talk about it. The meeting referred to in the attached letter has been moved up to July 11, 1986

and the FHLBB"—that is the Federal Home Loan Bank Board, is that right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. —"has asked me to be at the meeting. Please note that while all of the FHLBB restrictions in the letter are serious, numbers 5 & 6 effectively put Madison out of business. Thank you for your support, BB." And "BB" is you; right?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. And is there a mention of the word "press" in the note?

Ms. SCHAFFER. No.

Mr. CHERTOFF. You attached a letter to this; right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. I'm going to ask that you look at CCBW 885, 886, and 887. For your information, these are a production of documents from Betsey Wright that we received a couple of days ago.

This is a letter addressed to the Board of Directors of the Madison Guaranty Savings & Loan on June 19th concerning an examination being conducted of its operations. Is that the letter you attached to this note to Sam?

Ms. SCHAFFER. I believe so.

Mr. CHERTOFF. You didn't attach any press clippings, did you?

Ms. SCHAFFER. Press clippings? There were no press clippings. I mean, the rumor—there was nothing but rumor at this point. The press would call our office asking about the rumor, which indicated to me that the information was starting to leak out.

Mr. CHERTOFF. Now, you wanted to have a conversation with the Governor and Sam Bratton about what was coming up with Madison; right?

Ms. SCHAFFER. No. No, I did not want to have a conversation with the Governor.

Mr. CHERTOFF. It says, "We probably ought to talk about it."

Ms. SCHAFFER. "We," Sam Bratton and I.

Mr. CHERTOFF. You didn't want to talk to the Governor?

Ms. SCHAFFER. No, I didn't need to talk to the Governor.

Mr. CHERTOFF. So you wanted to talk to Sam Bratton before you went to the meeting; right?

Ms. SCHAFFER. Well, I wanted to talk to Sam Bratton to tell him what was coming. Not necessarily before the meeting. I mean, I wasn't thinking the meeting is something that—that didn't set the timetable.

Mr. CHERTOFF. Is there any reason you couldn't simply have written a note to Sam saying Madison Guaranty is going to be closed. There are rumors about it. We just want to let you know that is going to happen?

Ms. SCHAFFER. I guess I could have said that. I didn't.

Mr. CHERTOFF. Why did you put in here, "Because of Bill's relationship with McDougal, we probably ought to talk about it"?

Ms. SCHAFFER. I just explained that, I think. Because of their relationship, and because of Mr. McDougal's history of bragging about his relationship with Bill Clinton, because of his having told people over the years that he was friends with Bill Clinton, you know, bragging about that relationship, I was concerned that he

might try to involve the Governor's office and I didn't think they should have anything to do with it.

Mr. CHERTOFF. You didn't say in the note because McDougal brags about his relationship with the Governor. You said, "Because of Bill's relationship with McDougal." Was that true? Did you believe there was a relationship between the Governor and Mr. Jim McDougal?

Ms. SCHAFFER. I believed they were friends. I believed that Jim McDougal abused his relationship with Bill Clinton and might again.

Mr. CHERTOFF. He abused it in order to get influence? Is that what you are saying?

Ms. SCHAFFER. Well, he didn't get any, but he certainly tried.

Mr. CHERTOFF. Didn't he have something to say about the appointments to the Arkansas Savings & Loan Board?

Ms. SCHAFFER. Yes, he did.

Mr. CHERTOFF. In fact, wasn't he the person that Bill Clinton looked to to make recommendations on that?

Ms. SCHAFFER. I don't know.

Mr. CHERTOFF. It was during your period of time; right?

Ms. SCHAFFER. Bill Clinton didn't talk to me about it, so I don't know.

Mr. CHERTOFF. But he did talk to Jim McDougal about it?

Ms. SCHAFFER. Well, I don't know that for a fact. I've read that.

Mr. CHERTOFF. There have been documents the Committee has seen that say, "Bank Board, ask Jim McDougal"—

Ms. SCHAFFER. I haven't seen those.

Mr. CHERTOFF. All right. The Committee has seen them—but let's get back to this. You send this note, and you also sent along with it the letter that went to Madison Guaranty Savings & Loan from the Federal Home Loan Bank Board. Now you got a copy of this as Securities Commissioner?

Ms. SCHAFFER. I did.

Mr. CHERTOFF. And was it confidential?

Ms. SCHAFFER. It's not something that should go to the press, or just a member of the public in general.

Mr. CHERTOFF. You sent it on up to the Governor; right?

Ms. SCHAFFER. Yes, I did.

Mr. CHERTOFF. Now you make specific reference to 5 and 6, "Which could put Madison out of business." Those are on page 2 and page 3 of this letter; right? Number 5 and number 6?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. Number 6 is a restriction, a proposed restriction that would prevent the savings and loan from doing business, any new business with a number of entities which are listed on the last page of the letter; right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. One of those is Castle Sewer & Water Company; correct?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. One of those is Industrial Development Company of Little Rock, IDC, a name that we have heard recently. Did you know that Mrs. Clinton was representing or doing work for Madison Guaranty Savings & Loan with respect to IDC?

Ms. SCHAFFER. No.

Mr. CHERTOFF. But you did know she was representing Madison Guaranty Savings & Loan with respect to preferred stock; right?

Ms. SCHAFFER. Well, a year-and-a-half earlier, a year earlier. I did not know in 1986 that the Rose Law Firm was doing anything for them.

Mr. CHERTOFF. You knew that because you had had a conversation in which she had called you; right?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. Now, the purpose of her calling you was what, back in 1985?

Ms. SCHAFFER. I don't know the purpose. I can tell you what happened in the call.

Mr. CHERTOFF. What did she say to you?

Ms. SCHAFFER. You'll have to ask her for the purpose.

Mr. CHERTOFF. What did she say to you in that call?

Ms. SCHAFFER. She called and said that—well, let me be careful about that because I can't remember exactly what was said. I'll be happy to tell you what I think happened in the conversation, what I remember happening, and I just want you to keep in mind I can't remember word for word.

What I recall from the conversation is this: That she introduced herself, said she was representing Madison Guaranty Savings & Loan; that they had a proposal that was—either had been sent to us, or was going to be sent to us—I thought she said it had been sent to us.

Mr. CHERTOFF. But you know now it wasn't sent until the next day; right?

Ms. SCHAFFER. I don't know. I have heard or I have read that she—her billing records show that she called on the 29th of April, but I—

Mr. CHERTOFF. And the letter was dated the 30th of April.

Ms. SCHAFFER. That's correct, but I remember—I mean, I don't remember it being before the letter came. That's my memory. I don't know—her billing records show the 29th. That's not my memory. My memory was that the call was after we had the letter.

In any event, she called and said that they had a proposal, and what it was about; and I said I'm familiar with that; I've already looked at that. You know, I agree with the—basically I have no problem with that position, and you will be getting a letter soon to that effect, or something—

Mr. CHERTOFF. Do you mean to tell me that in the conversation you had with her you told her you were familiar with the proposal, she discussed it with you, and you told her you agreed with her position?

Ms. SCHAFFER. Well—

Mr. CHERTOFF. That's what you just said.

Ms. SCHAFFER. I'm paraphrasing. I'm saying—

Mr. CHERTOFF. In substance, I don't mean the exact words. This is very important because, frankly, we have heard other statements from the other participant in the conversation about this.

So your testimony now, it's abundantly clear, in substance is that she called you on this day, which is whatever is on the billing records—

Ms. SCHAFFER. No, I don't know that it's whatever—I don't know.

Mr. CHERTOFF. OK. She called you on "a" day.

Ms. SCHAFFER. OK.

Mr. CHERTOFF. You remember one call. She told you about this proposal. You told her you were familiar with it, and you told her you were going to agree with her and the letter would be coming.

Ms. SCHAFFER. I didn't tell her I was familiar with their—"the" proposal. I said, I'm familiar with the issue.

Mr. CHERTOFF. And you—

Ms. SCHAFFER. Familiar with the issue, which I thought was very simple, very basic, very straightforward; and the reason why I can remember that we didn't discuss—the details, or the substance—the merits of the proposal is because I remember saying something very brief like, yeah, I'm familiar with that issue.

Mr. CHERTOFF. So you—

Ms. SCHAFFER. I remember distinctly that in my mind I had already thought of that, looked at that; that it wasn't something new to me at all.

Mr. CHERTOFF. So you told her, as you just said a moment ago in your testimony, that you agreed with her position. Right?

Ms. SCHAFFER. Well I think—I think what I said—

Mr. CHERTOFF. Don't—

Ms. SCHAFFER. —I think what I said was—I may have said, I agree with you. I think in substance I said, basically I agree with the position—I mean, that preferred stock can be issued pursuant to the Business Corporation Code.

Mr. CHERTOFF. You told her that a letter would be coming, as you just indicated a moment ago?

Ms. SCHAFFER. Well, I can't—I mean, the best I can do—

Mr. CHERTOFF. Right.

Ms. SCHAFFER. —the best I can do is say that I really believe that I said something to the effect of, I don't think that's a particularly difficult issue. I have looked at that. You ought to be getting a letter. We'll try to do something as soon as I can get to it.

Mr. CHERTOFF. Now just for the record so you understand, and you remember only one call, right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. In fairness I should say there was only one call listed on her billing records which we just discovered in the last 2 weeks. What is interesting about that, and which may interest you, Mr. Brady, is that the telephone call that occurred and which you have just described to us occurred before the Rose Law Firm sent the letter out.

Now, I want to switch back to 1986, a year later. You give Sam Bratton, the liaison with the Governor, this note about Madison Guaranty. You say you probably ought to talk about it because of Bill's relationship with McDougal. Then you send the letter listing the troubled transactions, one of which is IDC.

Did you know that within less than 2 weeks after you sent that note to the Governor through Mr. Bratton with that letter, that less than 2 weeks later Mrs. Clinton sent a letter back to the Madison Guaranty Savings & Loan saying that they wanted to terminate the relationship representing them?

Ms. SCHAFFER. I've read that in the newspaper.

Mr. CHERTOFF. I'll put it up. It is RLF2 3062-3063.

Senator SARBANES. Mr. Chairman, could I make an inquiry here? I take it what Ms. Schaffer said is she didn't know. To the extent you know it now, it is because you might have read about it in the paper? Is that right?

Ms. SCHAFFER. Right.

Senator SARBANES. Well, I think it is very important that we be clear here and get out of this witness what she knew.

Mr. CHERTOFF. Did you know about this at the time?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Did you know about any other steps that were taken by the Governor—well, let me withdraw the question.

Am I correct in saying basically that the reason you wanted to let the Governor know through Sam Bratton about what was going to happen with respect to Madison Guaranty Savings & Loan was to help him protect himself from McDougal?

Ms. SCHAFFER. I can't let you—I do not think that I told Sam Bratton what was going to happen to Jim McDougal. I think what my note says is that it looks—that I believe that they needed to be closed.

Mr. CHERTOFF. I think what it says is, “. . . is in pretty serious trouble. Because of Bill's”——

Ms. SCHAFFER. Well, absolutely.

Mr. CHERTOFF. —“relationship with McDougal, we probably ought to talk about it.” Was the purpose of letting Sam Bratton and the Governor know about this to let them know so they could protect themselves with respect to McDougal?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. So they could distance themselves from Mr. McDougal?

Ms. SCHAFFER. Or do whatever they wanted to do with respect to Jim McDougal.

Mr. CHERTOFF. You would agree with me that one way to distance yourself from McDougal is to return your retainer and say you're not going to represent them anymore; right?

Ms. SCHAFFER. That's Hillary Clinton. That's not Bill Clinton.

Mr. CHERTOFF. Do you know whether there were any discussions in the Governor's office at that point in time about whether the Governor was holding Whitewater stock with McDougal?

Ms. SCHAFFER. I have no idea if there were discussions in the Governor's office. I never was told about Whitewater Development Company. I had no idea that Bill Clinton had a business relationship with Jim McDougal.

Mr. CHERTOFF. Well let me see, just to make sure we know whether you have any familiarity with it. I want to put up CCBW 888, and it is another Betsey Wright document. It is a slip of paper that says: “State of Arkansas, Office of the Governor.” It says: “To: Gov” and there's a little checkmark; from “BW,” Betsey Wright. It's dated July 14th. “White Water stock [McDougal's company]—Do you still have? [Pursuant to Jim's current problems.] If so, I'm worried about it.” And then there is, in other handwriting, scrawled, “No—Don't have any more.” Then there's a “B.” I take it you're not that “B”?

Ms. SCHAFFER. That “B” is Bill.

Mr. CHERTOFF. So that's Bill Clinton's handwriting?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. So you can help us with this document to the extent of letting us know that when Betsey Wright on July 14th writes, "White Water stock [McDougal's company]—Do you still have? [Pursuant to Jim's current problems.] If so, I'm worried about it." That the person who responds, "No—Don't have any more," was Bill Clinton. Right? Because that is his handwriting?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. I want to go back to the issue of Mr. McDougal a little bit more because something you said intrigued me. You said that Mr. McDougal was someone that you viewed as—you understood that he had some kind of a friendship and a relationship with Governor Clinton? Correct?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. You understood that he was, shall we say, had problems or was a questionable type of character even before the middle of the summer of 1986 when the Federal regulators decided to kick him out of the bank? Correct?

Ms. SCHAFFER. I'm not sure what the question to me is.

Mr. CHERTOFF. Well, did you know that he was a kind of a shady character, to use a kind of a common term, even before you heard from the Federal regulators in the middle of 1986 that they wanted him out of the bank?

Ms. SCHAFFER. Are you asking my personal opinion of McDougal? Or my professional—

Mr. CHERTOFF. I am asking what your knowledge was as of 1985 when you got a request from the First Lady on behalf of Madison Guaranty Savings & Loan. Did you know that Jim McDougal was a guy who had done things in the past that were illegal?

Ms. SCHAFFER. No. I don't know Jim McDougal. I didn't know Jim McDougal. I didn't have the benefit of 4 years of knowledge that I have today about Jim McDougal in 1985.

Mr. CHERTOFF. In 1984, you represented Madison Guaranty Savings & Loan; right?

Ms. SCHAFFER. I did not represent Madison Guaranty Savings & Loan. The law firm in which I was an associate represented Madison Guaranty Savings & Loan.

Mr. CHERTOFF. Jim Guy Tucker, the current Governor, was one of the partners working on that?

Ms. SCHAFFER. That's correct.

Mr. CHERTOFF. You prepared a memo for him regarding Campobello Island Estates?

Ms. SCHAFFER. I did.

Mr. CHERTOFF. I want to make sure you have it. It is dated March 14, 1984. Are you familiar with the memo?

Ms. SCHAFFER. Well, no, I'm not. As you know, Mr. Chertoff, I have not been deposed by the Committee, so, of course, I don't have this document or any other documents. Everybody else has seen it but me I think in the last 4 years, but the Independent Counsel has shown it to me.

The CHAIRMAN. We will give you the memo. One moment.

Mr. CHERTOFF. In fact what I would like to suggest, Mr. Chairman, is that we could maybe pause for a moment—

The CHAIRMAN. Absolutely.

Mr. CHERTOFF. —and give the witness an opportunity to read the memo, because I gather you have not actually had an opportunity to read it in recent years.

Ms. SCHAFFER. No, not in 10 years I think, or 12.

Mr. CHERTOFF. But you did write it?

Ms. SCHAFFER. Yes, I did.

Senator SARBANES. Well, the way it works around here, Ms. Schaffer, I think you had better read it first before you agree that you wrote it, just so we can be sure. OK?

The CHAIRMAN. Senator Sarbanes, I don't think that was necessary. We have given this to Ms. Schaffer, and we have asked her to take her time and to review it to ascertain whether this is the case. Have you had an opportunity, Ms. Schaffer, to—

Ms. SCHAFFER. Some of it is hard for me to read, but I can get the gist of it.

The CHAIRMAN. OK.

Mr. CHERTOFF. We can start the clock again. Do you agree you wrote the memo?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. Would you agree with me that the gist of the memorandum is that with respect to Campobello Island Estates, which was one of the real estate properties in which Madison Guaranty through Madison Financial had invested, that there were legal problems with the sale of the land?

Ms. SCHAFFER. That there might be.

Mr. CHERTOFF. That was because he had not registered the land sales as he was supposed to; correct?

Ms. SCHAFFER. That was my understanding.

Mr. CHERTOFF. You also had the understanding that it wasn't the first time he violated the Act because you, right in your memo at page 3, say that McDougal did not make a filing with respect to Maple Creek Farms or Gold Mine Springs; right?

Ms. SCHAFFER. Well, I'm a little concerned about that sentence in that I don't know that I had—that might have been an assumption. I think that there was an effort later to find out whether they were required to have filed.

Mr. CHERTOFF. But in your state of mind as of 1984, you had an awareness that Mr. McDougal was in violation, was operating in violation of the law?

Ms. SCHAFFER. Well, no. I think what this does is alert them to the fact that there may be a violation. It may be to advise Mr. Tucker that a filing may be required. If it hasn't been made, then one should be made and they need to take the steps to deal with it. Here are the penalties. Here are the possible sanctions.

Mr. CHERTOFF. Let me read you from the next-to-the-last paragraph on page 3. And I want to emphasize, this is something that you wrote in 1984, in March, which is about a year before you heard from Mrs. Clinton with respect to the desire of Madison to offer stock. It says:

Although the likelihood of criminal sanctions being imposed against a developer appears to be relatively small, it has to be done.

Mr. CHERTOFF. I'm sorry,

It has been done. Evidence that the developer willfully violated the Act would have to be fairly strong. The only concern I have on this point is the fact that McDougal did not make a filing with the OILSR on Maple Creek Farms or on Gold Mine Springs, and, to the best of my knowledge, there was no exemption available for those developments. This must be disclosed in the Statement of Record for Campobello Island Estates. The failure to comply with the Act in connection with one or two previous land development projects is some evidence that the failure once again to comply with the Act was willful and not just a negligent oversight.

Would you agree with me that if there is a willful violation of the Act, it is not merely subject to civil penalty, it is a crime? Right? That's what the memo says, right?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. I want to end with your conclusion—

Ms. SCHAFFER. I think I need to add, however, that I don't have—I said, "to the best of my knowledge," which was extremely limited. That is the point. "To the best of my knowledge," what I was telling them was, you need to deal with this. "To the best of my knowledge," which was almost none, "as to any other projects." That was strictly from a reading of the Act. I didn't know the details of the other projects.

Mr. CHERTOFF. In 1985—I want to read you the end, and then I am going to ask you this question—whether in 1985 when you got indication from Mrs. Clinton that Jim McDougal wanted to issue stock in this very same savings and loan, I want to know if you had any information that changed this between the time you wrote this in 1984 and your understanding then—

Ms. SCHAFFER. I didn't even remember this—

Mr. CHERTOFF. —in 1985.

Ms. SCHAFFER. —in 1985.

Mr. CHERTOFF. You didn't remember? You didn't remember you had done work on McDougal's savings and loan a year earlier?

Ms. SCHAFFER. I did not remember having done this memorandum—

Mr. CHERTOFF. Did you—

Ms. SCHAFFER. —a year earlier on—that's right.

Mr. CHERTOFF. You didn't remember having done work on Mr. McDougal's sales of land for the savings and loan?

Ms. SCHAFFER. I didn't even think about it, Mr. Chertoff.

Mr. CHERTOFF. Here we are. I want to read you the last page, the last two paragraphs:

Perhaps just as potentially devastating to the project is the possibility that upon discovering the failure of McDougal and Wade to make a filing and determining that they should have complied with the Act and did not, HUD would seek an injunction against them to force them to stop selling lots or making any improvements whatsoever until they comply with the Act. . . .

Then to go to the next paragraph, you go:

These risks should be weighed against the benefit of moving forward now on the initial 93 lots without first complying with the Act. The obvious benefit of moving forward is that the sale of those lots will provide critical capital needed immediately to fund the start-up of the project and will hopefully generate more widespread interest in the project as well. On the other hand, the more interest there is in the project, the higher profile it will have, thereby increasing the likelihood that HUD, unfortunately—

And they're the regulators, right?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. Then you say:

Will also be interested in the project. These, of course, are business risks which require business decisions.

When you were a regulator, Campobello Island came up in the discussion of Jim McDougal's bank; right? When you were at that Federal Home Loan Bank Board meeting; right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. Did you mention this? Did that bring this memo to mind?

Ms. SCHAFFER. No, it did not.

Mr. CHERTOFF. Let me leave you with one last question, or one last statement I want to put in for the record.

You have given us a recollection as best you can of your conversation with Mrs. Clinton which took place, you don't know the date, but the records establish the day, concerning her representation of Madison in connection with the issuance of the stock. You have described what she said to you. You have described what you said to her.

I will tell you what she said in her interrogatory responses to the RTC that were dated—"In the Matter of Madison Guaranty Savings & Loan Association." I don't know that I have the date on them, but it is at page—it is, sorry, the Order of February 4, 1994.

She goes at page 41:

I was not involved in any meetings with State regulators on these matters. I may have made one telephone call to the Arkansas Securities Department to find out to whom Mr. Massey should direct any inquiries regarding an S&L matter. I do not remember to whom I spoke. Insofar as I am aware, my name appears only three times in the many documents exchanged by Rose and the State regulators.

I will also put in for the record another answer given by Mrs. Clinton in the same set of interrogatory responses. This has to do with her sending back that retainer to the Madison Savings & Loan within 2 weeks after you let the Governor know through Mr. Bratton—I'm not saying you knew he was going to do it—but within 2 weeks after you gave the Governor that information, that the regulators were going to be meeting about, among other things, IDC, she sends back the retainer.

When she is asked about it, she says, and this is on page 38:

When I wrote my July 17, 1986 memo to Herb Rule (. . .) and my July 14, 1986 letter to Messrs. McDougal and Latham (. . .), I do not believe I had heard anything about a July 11, 1986 meeting in Dallas between FSLIC and Madison Guaranty personnel.

Yet, you will agree, having seen your own note to Sam Bratton, that you specifically indicated that there was going to be a July 11, 1986 meeting between the regulators and the people at Madison Guaranty Savings & Loan because Madison Guaranty was in serious trouble. That is in your note, right, which we just put up there, your note of July 2nd?

Ms. SCHAFFER. The question is what?

Mr. CHERTOFF. Am I correct that your note of July 2nd, within 2 weeks before that retainer was sent back, does tell Sam Bratton to convey to the Governor that there was going to be a July 11th meeting between the regulators and Madison Guaranty Savings & Loan because the Bank was in serious trouble. Right?

Ms. SCHAFFER. No.

Mr. CHERTOFF. It doesn't say that?

Ms. SCHAFFER. No, it does not say to "tell the Governor" anything. I don't know—whatever they wanted to do with it after that was their business, but it doesn't say, "tell Bill Jim's in trouble."

Mr. CHERTOFF. Well, why don't we put the note up on the Elmo. It says, "Madison"——

Ms. SCHAFFER. It says, "we should talk," you and I should talk.

Mr. CHERTOFF. It says:

Because of Bill's relationship with McDougal, we probably ought to talk about it. The meeting referred to in the attached letter has been moved up to July 11, 1986, and the FHLBB has asked me to be at the meeting.

And then you attached to this note the 3-page letter, which I have shown you earlier, which actually sets forth the problems the FHLBB has with, among other things, IDC. Is that correct?

Ms. SCHAFFER. My note clearly mentions the meeting in Dallas and attaches the letter. I just want to make sure I'm answering the question in that and not answering everything else you said.

Mr. CHERTOFF. All right. So your note mentions the July 11th meeting and attaches the letter?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. OK.

Ms. SCHAFFER. I would also—may I say something?

The CHAIRMAN. Certainly.

Ms. SCHAFFER. In this conversation with Mrs. Clinton, I have—I mean, I didn't get to finish what happened in the conversation.

She did ask me—that's how come it was so brief. That is the reason it was brief, as I recall, because I didn't give her an opportunity to say much else when I said, "I'm familiar with that issue," and really brushed it more or less aside.

She said, "Who should we work with at the Department?" I referred her to Charles Handley. I said, "He is the one who is working on this. He is the one who knows all of this, all about it; work with Charles."

I don't think that my recollection is inconsistent with that, at all.

The CHAIRMAN. OK. Thank you.

Senator Sarbanes.

Senator SARBANES. Ms. Schaffer, how long did this phone conversation with Mrs. Clinton last? Do you recall?

Ms. SCHAFFER. Five minutes.

Senator SARBANES. It was a short, brief conversation?

Ms. SCHAFFER. Yes.

Senator SARBANES. Now the reason I ask you that question, and you've probably seen it, is the press is reporting it as an hour-long conversation.

Ms. SCHAFFER. Right.

Senator SARBANES. The reason the press reports it as an hour-long conversation is because Mrs. Clinton on her timesheets indicated an hour. She indicated that hour not only for the telephone conversation with you, but for other matters as well.

What has happened is that has been abstracted now in the report that she had an hour-long conversation with you, even though her own billing records show that, while she listed that conversation, she listed other matters as well when she put the hour on her billing sheets. So I want to be very clear about it. Your conversa-

tion with her was a matter of minutes, you said; maybe as much as 5 minutes, at most?

Ms. SCHAFFER. Yes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Good morning, Ms. Schaffer, Mr. Brady, Mr. Handley.

We have gone back and forth over a period of some years, and questions have been asked in kind of rapid form. Let me ask a question that has not been asked yet. Ms. Schaffer, did anyone apply any pressure upon you to do any favor for or on behalf of the Madison Guaranty Savings & Loan or Mr. McDougal, ever?

Ms. SCHAFFER. No.

Mr. BEN-VENISTE. Mr. Brady, do you feel that any pressure was put on you to do any favor, or to do anything untoward on behalf of Madison Guaranty Savings & Loan?

Mr. BRADY. Sir, I only dealt with them on this one issue that you already have my statement on. No, I do not—nobody ever attempted any pressure on me in regard to Madison.

Mr. BEN-VENISTE. Did you do anything improper or untoward?

Mr. BRADY. I do not believe I did.

Mr. BEN-VENISTE. And did Ms. Schaffer do anything improper or untoward, as far as you know?

Mr. BRADY. Well, I had suggested that the whole matter be referred to the Attorney General for his opinion on the propriety of the issuance of the stock. I was not as sure of that as the Rose Firm attorneys would have been—

Mr. BEN-VENISTE. We understand.

Mr. BRADY. —and she took their position, and she was more sure of it than I, but I can't say that was wrong; no.

Mr. BEN-VENISTE. And, Mr. Handley, did anyone put any pressure on you to do anything improper or untoward to favor Madison Guaranty Savings & Loan?

Mr. HANDLEY. No.

Mr. BEN-VENISTE. Did you or Mr. Brady or Ms. Schaffer do anything to favor Madison Guaranty Savings & Loan?

Mr. HANDLEY. No.

Mr. BEN-VENISTE. Now let's go back to this memorandum which has been marked CCBW 884 of July 2, 1986, Ms. Schaffer, your handwritten note to Mr. Bratton. Can we put that up, please?

If I understand your testimony, you knew that Mr. McDougal had worked for Mr. Clinton; correct?

Ms. SCHAFFER. I think my husband told me that—I didn't know that. I think he told me sometime later that Jim McDougal had worked maybe in the Governor's office for Bill Clinton during his first term.

Mr. BEN-VENISTE. OK. You knew that there was some relationship between the two men?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. And you were also aware that Mr. McDougal had the reputation of throwing names around and of being something of a braggart?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. Now if I understand your testimony here this morning, your concern was to advise Mr. Bratton about the cir-

cumstances and the condition of the Bank and what was likely to happen with respect to Madison Guaranty Savings & Loan, and that you were also concerned that Mr. McDougal might blindside somebody.

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. Indeed the Governor, or somebody in the Governor's office, with some request and you wanted them to be prepared for it?

Ms. SCHAFFER. I wanted them to be prepared to stay out of it; to tell them to get lost.

Mr. BEN-VENISTE. And that is not an unusual occurrence in connection with the head of a regulatory agency dealing with the Chief Executive Officer? Would that be fair to say?

Ms. SCHAFFER. No—I regularly—I think this is what is unfair about the characterization of me calling the Governor's office and telling them, informing them as to the perilous condition of Madison Guaranty. I had done the same thing in 1985 with regard to two other savings and loans. In fact, I'd had several conversations in 1985 with Sam Bratton about the savings and loan we eventually closed that year. The State had money in that savings and loan that was possibly not insured. We had several conversations.

In addition, we were worried about press calls, that it may provoke a run on the savings and loan. Another savings and loan in Conway, Arkansas, that I wrote a lengthy memorandum, a 2- or 3-page typed memorandum to Sam Bratton about in 1985, and I'd like for somebody to get that. I don't have it. I've asked the Securities Department to find it. They say they can't find it. But that kind of communication was not unusual. In fact, I took a day or two to write the memo to Sam in 1985 about a small savings and loan in Conway, and he had no relationship with anybody there.

Mr. BEN-VENISTE. Well rest assured that we will try to get it, and that you will have the opportunity today—it may not come at the moment that it occurs to you to give it, but you will have the opportunity to put these things in the proper context before the day is out. So I want to assure you of that, and we will probably be here for several hours.

Now with respect to the suggestion that maybe it was improper—and I do not say that my friend, Mr. Chertoff, made that allegation—but lest there be any confusion about it, that the communication that you had gotten from the Federal Home Loan Bank Board was somehow something that it was improper for you to share with the Chief Executive Officer of the State, could you comment on that?

Ms. SCHAFFER. That is not my interpretation. Obviously the Federal Home Loan Bank Board documents are confidential, and we had a confidentiality agreement with them, the purpose of which obviously was not to disclose damaging information about a savings and loan to the public in general, that might trigger a run on the savings and loan and cause its collapse. Clearly you have to be careful with that.

But in my view it was important that the Governor's office know in advance that the savings and loan might be closed; that a rumor was on the street that it might be, and be prepared to take those calls from constituents who feel free to call the Governor's office to

complain about their checking account in Arkansas if they don't like the way it is being handled; that if those calls came in, they needed to be prepared to answer them and assure people that—not to worry.

Mr. BEN-VENISTE. The whole question about a confidence in the savings and loans and the threat of runs on particular banks that were in trouble was of grave concern both in Arkansas and also throughout the country at that time, increasingly so?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. Let me go to this question which has become part of the reflected wisdom or mantra that is recited about the Whitewater matter in general as it relates to the Madison Guaranty Savings & Loan failure and what it cost the American people. When did you recommend that the bank be taken over?

Ms. SCHAFFER. That it be closed?

Mr. BEN-VENISTE. Yes.

Ms. SCHAFFER. And transferred to FSLIC?

Mr. BEN-VENISTE. Yes.

Ms. SCHAFFER. In 1987, December, I think December.

Mr. BEN-VENISTE. Of what year?

Ms. SCHAFFER. 1987.

Mr. BEN-VENISTE. When was it actually closed?

Ms. SCHAFFER. It was transferred to the FDIC I think in March 1989, in a management consignment program I think to await funding of the RTC.

Mr. BEN-VENISTE. What was the reason why your recommendation for the closing of the bank and the takeover by Federal authorities not acted on by you independently of Federal authorities?

Ms. SCHAFFER. In my view—and I have told this story many times—that although we did have the statutory authority to do that, as a practical matter we did not believe it was feasible, or advisable, or a responsible thing to do without the concurrence and the participation of the Federal Home Loan Bank in that process. Because without their participation, there would be—FSLIC would not be participating and there would be no depositor payoff at the time of closing the institution.

It concerned me greatly that if you proceeded with a State receivership with no participation of the FSLIC and had to tell depositors at the time that there would be no depositor payoff, that—this was in 1985 and 1986, and no one was aware really generally in the public that the FSLIC didn't have any money, or was asking for money from Congress and didn't have enough money—that that would immediately disseminate that information everywhere. I thought that was an irresponsible thing to do.

Mr. BEN-VENISTE. As a matter of fact, the Federal authorities really advised that they would get to this in time, and that prudence should dictate, and this was a larger question than just Madison Guaranty Savings & Loan; correct?

Ms. SCHAFFER. That's correct.

Mr. BEN-VENISTE. And we have your letter of December 10, 1987, to Mr. Stuart Root, the Director of the Federal Savings & Loan Insurance Corporation here in Washington, which is Document No. 5000326 and 7. I am not going to take the time to go through that

now, but rest assured that we do have that document and it is corroborated in the record that you made that request.

Let me go to the question of how much money was lost as the result of the delay between the time that you asked that the bank be closed and the time that the bank was actually closed.

I want to refer the Committee to the CNN interview of Walter Faulk. Could we put that up, please. Walter Faulk was the former Federal regulator who was a Senior Vice President with the Federal Home Loan Bank Board in Dallas, Texas, and he would have had authority over Arkansas S&L's. Correct?

Ms. SCHAFFER. He was the supervisory agent for many of the Arkansas savings and loans.

Mr. BEN-VENISTE. Mr. Camp, an interviewer for CNN, was asking Mr. Faulk the following questions, and I will read from the record:

Mr. CAMP: At the time of Mrs. Schaffer's letter, this audit report estimated Madison was about \$10.5 million in the hole. By 1989, when Madison was finally closed, losses had climbed to \$15 million. Since then, the Federal Government has sold off Madison's holdings at bargain-basement prices and taxpayer losses have soared to \$68 million today.

Mr. FAULK: Had it been timely acquired [meaning acquired by the Federal authorities], it's my opinion that whatever the ultimate loss is, it could greatly have been curtailed, by the taking of more timely action.

Mr. CAMP: So this would have been a Federal problem, not a State problem?

Mr. FAULK: That's correct.

Mr. CAMP: And what about Beverly Bassett Schaffer's role?

Mr. FAULK: She acted responsibly at all times and I don't see how anyone could say, that knew the history of this case, or who would look into the history of the case, could say that she acted irresponsible or delayed or drug her feet in any manner whatsoever.

Now let me turn, Ms. Schaffer to the question of the appropriateness of the raising of capital through the sale of preferred stock that was a year-and-a-half or so before this Federal Home Loan Bank Board meeting that we have described here today together with your memo to Mr. Bratton.

So a year-and-a-half before you were advised that the Rose Law Firm has been retained by Madison Guaranty Savings & Loan to look into the possibility of raising capital through the issuance of preferred stock. Is it correct that this is a matter—that is, the raising of capital through the issuance of preferred stock—that was widely considered throughout the United States at this time?

Ms. SCHAFFER. The preferred stock instrument that was being considered, the kind of instrument that was being considered by Madison, was being considered and recommended really everywhere by Federal regulators particularly for small savings and loans, closely held entities without a market, no public market for common stock, as an alternative or as a way to raise capital. Obviously, debt, you know, would not be counted as part of their regulatory net worth. For a small institution with no other way of—no public market, you know, for common stock of any kind, preferred stock was probably the only realistic instrument available to raise equity to infuse capital in a savings and loan during this time, and that is why the Federal Home Loan Bank was pushing it.

Mr. BEN-VENISTE. All right. When you say the Federal Home Loan Bank was pushing it, in other words this was something that

the Federal regulators saw as a salutary way, a good way for the banks in trouble to raise their capitalization?

Ms. SCHAFFER. One of the few ways.

Mr. BEN-VENISTE. Let me refer you to a November 1985 article that appeared in *The American Banker*, and refer to it very briefly. This is obviously a LEXIS-NEXUS printout from that publication, and I refer to the paragraph on the first page of the article—it is a long article, and I am not going to go into all the details—but it says: “The capitalization of the thrift industry gradually declined during the 1970’s and early 1980’s. Only in the past year has the slide in the industry’s average capital-to-asset ratio been halted, and the capital bases of many thrifts still remain too thin.” That was a problem of Madison Guaranty Savings & Loan; correct?

Ms. SCHAFFER. Yes. Without sufficient capital, with the losses in real estate, there was no capital to write those losses off against. As their net worth eroded, the more capital they needed to book any losses against down the road.

Mr. BEN-VENISTE. They would be in a net loss position and insolvent? If they were too thin, the danger was they would go under the line?

Ms. SCHAFFER. Right.

Mr. BEN-VENISTE. Now skipping a paragraph: “In response to the concerns over their soundness, thrifts, like banks, have employed a variety of methods to improve capitalization, including increasing their retained earnings, issuing new common and preferred stock, and instituting new forms of long-term debt.” Correct?

Ms. SCHAFFER. Correct.

Mr. BEN-VENISTE. And this was very commonly known throughout the country, and something which the Federal regulators were encouraging savings and loans to do, as well as banks, in order to improve their position?

Ms. SCHAFFER. That’s my belief.

Mr. BEN-VENISTE. In fact, the work that the Rose Law Firm was doing and handled by Mr. Massey, Mr. Brady and Mr. Handley, did you have contact with Mr. Massey?

Mr. HANDLEY. I did.

Mr. BRADY. I did not.

Mr. BEN-VENISTE. So Mr. Handley, you had contact with Mr. Massey and what was the issue over which you had contact?

Mr. HANDLEY. Well, initially it was the preferred stock issue; and later they filed a broker-dealer application.

Mr. BEN-VENISTE. In connection with the preferred stock issue, while you all agreed that under Arkansas law it would be permissible for Madison Guaranty Savings & Loan to increase its capitalization through the issuance of preferred stock, there was a hitch, wasn’t there?

Mr. HANDLEY. Yes, they had to file a specific application to do so. Right.

Mr. BEN-VENISTE. What was that, Ms. Schaffer?

Ms. SCHAFFER. The specific application?

Mr. BEN-VENISTE. The “hitch” that was—the condition that was attached to their ability to do it.

Ms. SCHAFFER. The initial approval, so-called “approval” of the novel stock plan was really just an opinion that State law didn’t

prohibit issuance of preferred stock by State-chartered thrifts. But they never followed up with a specific proposal on the form of instrument, and a specific amount of dollars they would raise, and a disclosure document, and all the sorts of things that would have to have been done in advance.

In addition, they filed a broker-dealer application that they wanted to be approved to begin operating, we feared, in order to utilize it to place the preferred stock, and that is precisely what we did not want.

The condition attached to the approval of the broker-dealer was that they first raise the \$3 million in capital through whatever means, a third-party, an independent arms' length transaction, not an affiliated broker-dealer, infuse the capital, demonstrate financial responsibility, and then operation of the broker-dealer might could be approved, but they would not have been—they were not allowed to use that vehicle to place their own stock.

Mr. BEN-VENISTE. First they would have to raise funds in compliance with Federal regulations—

Ms. SCHAFFER. That's correct.

Mr. BEN-VENISTE. —in advance of issuing the preferred stocks?

Ms. SCHAFFER. The Minimum Net Worth requirements were actually Federal regulations. The State's requirement as to the financial condition of the savings and loan was that they be solvent. So actually the Minimum Net Worth requirements that we told them they would have to meet in advance were a higher standard than the State law required.

Mr. BEN-VENISTE. They could not meet those requirements by selling the preferred stock? They could not get there through the vehicle of the preferred stock?

Ms. SCHAFFER. They could if they placed the preferred stock through an unaffiliated third party brokerage firm. They had to place that capital independently of the savings and loan itself. In other words, we did not want them using their own subsidiary to place this stock that they claimed would be the way to recapitalize the institution. That was not acceptable.

Senator SARBANES. You were not going to allow them to use their own broker-dealer to place the preferred stock?

Ms. SCHAFFER. Right.

Senator SARBANES. They put a condition on that; correct?

Ms. SCHAFFER. Right.

Senator SARBANES. You said, if you are going to raise this capital by preferred stock, what you ought to do, you're going to have to raise it independently and not through your own broker-dealer subsidiary. Is that correct?

Ms. SCHAFFER. Right.

Mr. BEN-VENISTE. Mr. Handley, that was clear to you that you were imposing a requirement that exceeded the State requirement on Madison in terms of increasing their capital-to-loan ratio?

Mr. HANDLEY. Yes, as Ms. Bassett said, the Federal regulation benchmark at that time was 3 percent of total assets. We told them they had to meet that benchmark before we approved their broker-dealer application.

Mr. BEN-VENISTE. You had considerable back-and-forth with Mr. Massey about this, but he accepted that this was a requirement with which Madison would have to comply in order to go forward?

Mr. HANDLEY. Mr. Massey and Mr. Latham, through correspondence and meeting with them, it was well understood that before we approved the broker-dealer application—we also give them a time limit in which they had to meet the net worth requirements.

Mr. BEN-VENISTE. Now in the vernacular, did anyone approach you to cut them any slack in connection with this requirement?

Mr. HANDLEY. No.

Mr. BEN-VENISTE. Did Ms. Schaffer tell you, well, look the other way, or give them more time than you were prepared to give them?

Mr. HANDLEY. I have always said what I thought and did what I wanted to.

Mr. BEN-VENISTE. And that is exactly the way your department treated this matter?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. In fact, as a result of the requirements which you imposed, Madison was unable to comply and never went forward with the issuance or sale of any preferred stock. Correct?

Ms. SCHAFFER. They didn't issue any preferred stock, and they also didn't have a broker-dealer subsidiary.

Mr. BEN-VENISTE. Nor was that approved. Nor was there any approval for the sale of the preferred stock through that vehicle of a broker-dealer by Madison Guaranty Savings & Loan?

Mr. HANDLEY. That's correct, because they never did bring their net worth up.

Mr. BEN-VENISTE. So all of this business about having a cozy relationship and taking advantage of a personal relationship to get a favor for Madison Guaranty Savings & Loan is pure hokum, isn't it?

Mr. HANDLEY. Yes, in my opinion, I can only see benefits of issuing the preferred stock. I mean, it would help the regulators; it would help the depositors; it would help the insurers. I just—I don't see what's bad about it.

Mr. BEN-VENISTE. If they could have complied with the requirements that you laid down, it would have been a good thing; but they couldn't; they didn't; and nobody asked you to try to find a way to get around those requirements for them?

Mr. HANDLEY. Absolutely not.

Mr. BEN-VENISTE. Let me turn to the question of—and I know it is somewhat unfair, Ms. Schaffer, to ask you about things that you did not know about contemporaneously. I refer to the fact that the Rose Law Firm refunded the remaining retainer funds that were in its possession to Madison, and responded to a request within the firm to see whether the firm would be able to represent the FSLIC in anticipated matters relating to the savings and loan and banking crises of the late 1980's.

Let me ask you this question as a general proposition: Is it within your ambit of knowledge that law firms around the country were all trying to determine at that time whether they would be in a position to bid for and to get Federal FSLIC or FDIC business at this time?

Ms. SCHAFFER. Well, I was not in private practice at this time so—I think that is probably true, but I'm not sure I have personal knowledge of what private law firms were doing at the time, since I was a regulator at that time. There certainly was a lot of the business to be passed around. I know that.

Mr. BEN-VENISTE. The question was that if there was a conflict at the law firm, that business would not be available. So that the managing partners or other partners in the firm were trying to canvass their firm to see what business they had in the firm and whether that would make it impossible or infeasible for the firm to bid on the Federal business?

Ms. SCHAFFER. That would be the right thing to do for bidding on it, yes.

Mr. BEN-VENISTE. Finally, with respect to the meeting in Dallas, did you take any action at the meeting in Dallas inconsistent, in your view, with the best interests of the depositors of Madison Guaranty Savings & Loan?

Ms. SCHAFFER. We knew in advance of the meeting in Dallas what the plan was, and we fully supported that and encouraged it, and met with Walter Faulk and his people before the meeting and discussed what he was going to say. He was going to conduct the meeting. I sat with him at the head of the room. He conducted the meeting. We knew what was to take place; that an ultimatum was going to be given; that the Cease and Desist Order would be entered, or there would be a filing made in Federal court to force it. We fully supported that.

I have heard last summer in House Banking Committee hearings that I wasn't invited to that I didn't say anything. I didn't have to say anything. Mr. Faulk said all and more that needed to be said.

Mr. BEN-VENISTE. And Mr. Faulk—

Ms. SCHAFFER. He said it well.

Mr. BEN-VENISTE. —is the—

Ms. SCHAFFER. The only reason I would have needed to talk is to—you know, for myself. It wasn't necessary. He told them the way it was going to be, and they accepted it.

Mr. BEN-VENISTE. And Mr. Faulk is the same gentleman whose comments I read earlier who said that you acted in all respects appropriately?

Ms. SCHAFFER. Yes, we fully supported the action and encouraged it, and hoped that—

Mr. BEN-VENISTE. Mr. Chairman, my red light is on.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Good morning, Ms. Schaffer.

Did you know a fellow named Mickey Brown who was the savings and loan supervisor in Missouri. He worked for me about the time that you came into office as the Commissioner of Securities?

Ms. SCHAFFER. No.

Senator BOND. Well, I was interested. I think that you all perform similar functions. Among the responsibility that you had as Commissioner was to ensure the safety and soundness of State-chartered S&L's in Arkansas, was it not?

Ms. SCHAFFER. We had oversight of State-chartered S&L's.

Senator BOND. And did you have examiners who examined State S&L's?

Ms. SCHAFFER. We did not.

Senator BOND. How did you conduct the examinations of State S&L's?

Ms. SCHAFFER. We did not. My understanding is that sometime in the 1970's—and Charles is probably more knowledgeable about this than I—that perhaps, or late 1970's or early 1980's, that the department did not do joint examinations anymore; that in lieu of the examinations they required an independent audit.

I really think I am going to have to let Charles address that, because that was the policy in place when I came to the department. My department's primary responsibility was to regulate the securities industry, and then other things like credit unions and savings and loans.

I suspect that part of the reason that on-site examinations fell by the wayside or an audit was determined to be better, or in lieu of that, was just a lack of staff and resources to do that.

Senator BOND. The FHLBB was doing the audits?

Ms. SCHAFFER. Right.

Senator BOND. In any event, were they the ones solely who had the safety and soundness responsibility?

Ms. SCHAFFER. Well—

Senator BOND. Did your office review the audits to ascertain whether they were adequate, of the S&L's?

Ms. SCHAFFER. The Federal Home Loan Bank audits? Or the independent audits?

Senator BOND. No, the independent audits.

Ms. SCHAFFER. Yes.

Senator BOND. You did. So you had the audits?

Ms. SCHAFFER. Yes.

Senator BOND. Did you have any responsibility to take any action at the State level where a savings and loan had its net worth impaired?

Ms. SCHAFFER. Most of our savings and loans' net worth—most of the savings and loans had impaired net worth at this time that we had jurisdiction over.

We had statutory authority in the event—I don't have the statute in front of me—that an institution became insolvent, that we could appoint a receiver. It did require us to tender that receivership, though, to the FSLIC.

Senator BOND. But you did work with the FHLBB?

Ms. SCHAFFER. Yes, we did.

Senator BOND. The Federal Home Loan Bank Board.

Ms. SCHAFFER. Yes.

Senator BOND. They apparently kept you advised of what steps were going on and what steps they were going to take with respect to Arkansas State-chartered savings and loans?

Ms. SCHAFFER. Yes.

Senator BOND. They required you to keep that confidential?

Ms. SCHAFFER. We had a confidentiality agreement with them, and it was my understanding and belief that the documents could not be distributed. I don't think that meant to other State officials.

Senator BOND. Was there any exemption for other State officials?

Ms. SCHAFFER. I'm not sure what the confidentiality agreement we have said. I don't even know. I'm not sure I ever saw it.

Senator BOND. Who was the one that developed the practice of communication with Sam Bratton about a potentially failing Arkansas savings and loan? Was that something that Mr. Bratton of the Governor's office asked? Or was that something that you initiated on your own?

Ms. SCHAFFER. I initiated that on my own.

Senator BOND. That had not been the previous practice?

Ms. SCHAFFER. Well, until I got there there were no—I mean, the savings and loans failed—the first ones in history failed, unfortunately for me, while I was there. So there wasn't really—

Senator BOND. I know the feeling.

Ms. SCHAFFER. —anything to look to in the past in terms of how to communicate, or a method of communication, or appropriate communication about them.

Senator BOND. I went back to check because Mr. Ben-Veniste has said that it was standard practice to advise the Governor or the top officials. I believe that he is dead wrong on that.

You have adopted that practice. Today, I asked Mr. Brown specifically who would be notified if they were going to take down a savings and loan, if they were going to close it or take regulatory action. He said the only people they would notify would be the Federal Home Loan Bank Board; that nobody else would know. When they took down a big savings and loan in Missouri, he said he did not even advise the director of his department.

I asked him why not, what if one of my big contributors was involved in a financial institution that was going down? He said, you would be the last one to know.

I said, why? He said, well because if anybody found out that we were going to take down a savings and loan, somebody could be juggling around, doctoring the books, or Mickey Mousing—not artful, perhaps, but I think you understand what he said. He said it would be like a pitcher telling a batter what he was going to throw, because there are changes that could be made in the institution if they know in advance that a Cease and Desist Order or other regulatory action is being taken.

Can you give us any assurance that the information that you conveyed to Mr. Bratton did not reach Mr. McDougal or any of the other people, or Mr. Latham, prior to the July 11th meeting?

Ms. SCHAFFER. I think they already had some sense something was coming at the July meeting because there were press inquiries. I think that that information was already leaking out. I don't think they knew what was going to happen, but I think they were beginning to panic.

Senator BOND. But they didn't have the knowledge that you had of the regulatory action.

Ms. SCHAFFER. I am not sure that I knew when I wrote this note to Sam Bratton, or I don't think I told him what was going to happen at the Dallas meeting. I'd have to ask Sam, but I don't think I told him what was going to happen at the July meeting.

You know, you have probably taken his deposition, but I haven't talked to him, because if I talk to him then I'll have a problem, an-

other problem, because I talked to Sam Bratton. So I'm trying to recall as best I can without talking to him what I may have said, but I don't believe I told him what was going to happen at the Dallas meeting. I may have, but I don't have—I had trusted Sam Bratton with the information. I never thought that they[sic] would pass that kind of information along.

Senator BOND. But you did expect him to pass it along.

Didn't you testify earlier that the purpose of the July 2, 1986 memo, that handwritten note to Sam signed "BB" was to let the Clintons know that they ought to slam the door or have nothing further to do with Mr. McDougal?

Ms. SCHAFFER. I wanted to let Sam Bratton know. Sam could do whatever he wanted to with that. My advice was, to him, to Sam, who is my only contact.

Senator BOND. Yes.

Ms. SCHAFFER. Well, this is not something anybody ought to meddle with.

Senator BOND. Yes. But you also stated earlier today, if I recall, that you told him that so that they would either shut the door or the Clintons would have nothing further to do with Mr. McDougal, did you not?

Ms. SCHAFFER. It was my impression that Mr. McDougal abused his relationship.

Senator BOND. Yes, I understand that.

Ms. SCHAFFER. And I suspected that if he was panicking, that he might do it again.

Senator BOND. So you passed that information to Mr. Bratton for the purpose of protecting the Clintons—

Ms. SCHAFFER. No, I—No—

Senator BOND. Let me finish. You have been cut off, and I think that is unfortunate and I apologize for that, but let me finish. You told us that you conveyed that information for a purpose, and you stated here today that the purpose was that the Clintons should have nothing further to do with McDougal. Is that correct?

Ms. SCHAFFER. I conveyed the information so they would know what I believed the condition of Madison was, like I did with the two other savings and loans in 1985. I also did not—you don't understand. I mean, that's the kind of thing—somebody would call up the Governor's office and—that's not—because everybody knows everybody.

Now, I know that has been talked about in terms of, you know, some sinister force, but my goal was not to protect the Clintons. I am not interested in protecting the Clintons. I wasn't interested in protecting anybody. My purpose was to make sure that Jim McDougal—

Senator BOND. Was cut off from the Clintons?

Ms. SCHAFFER. Not "cut off." You don't understand.

Senator BOND. Oh, I think I do.

Ms. SCHAFFER. What did I know about the relationship?

Senator BOND. I think I do. You applied for the position of Securities Commissioner. Your brother, Woody, wrote letters. President Clinton wrote him back saying he needed you to do something else.

Then did you ask Mr. McDougal in the fall of 1984 to recommend you to the Governor for appointment as Securities Commissioner?

Ms. SCHAFFER. Did I what?

Senator BOND. Did you ask Jim McDougal to submit your name or to make a recommendation to the Governor for you?

Ms. SCHAFFER. I do not know Jim McDougal, I did not ask Jim McDougal, and I would not have wanted Jim McDougal's recommendation.

Senator BOND. Who made that request on your behalf?

Ms. SCHAFFER. Who?

Senator BOND. Who made that request to the Governor on your behalf?

Ms. SCHAFFER. I have no idea what Jim McDougal did. I have read in The New York Times that he said that he did. That is the first I knew of that.

Senator BOND. All right. Mr. Chairman, my time is up, but I think just to end this conversation we ought to put up DKSX 26305, which is a message submitted to us by the Governor's office, which says, "Message telephoned. For: Governor. From: Jim McDougal. Home Phone: 663-8690. Reference: Beverly Bassett for Securities Comm. Date: 12/22." That was a few days before the appointment of Ms. Schaffer, or Ms. Bassett at the time it was made.

Thank you, Mr. Chairman.

Thank you, Ms. Schaffer.

The CHAIRMAN. Senator Dodd.

OPENING STATEMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman.

I won't take a great deal of time here. A lot has been gone over.

Let me first of all say I hope we are not necessarily going to try and ask our witnesses to be responsible for reviewing securities laws as they may be in all 49 other States. I say that with all due respect to my colleagues, but States are different in how they perform their functions. I would not expect you to respond to how Connecticut does, any more than I think you should be expected to respond how Missouri might conduct its affairs.

To me the critical question here, going back about who makes recommendations, I mean, the question of how you have done your job it seems to me to be the fundamental question we ought to be asking ourselves.

The best witness I think on this is probably the Federal regulator, Mr. Faulk, who is the guy in Dallas who has no axe to grind here. He is asked: "How does this person here, how does she do her job?"

I think Mr. Ben-Veniste or maybe Senator Sarbanes introduced it in the record, but first of all it is pointed out by the interviewer, Mr. Camp, on CNN, 15 months, 15 months before the Feds close Madison Guaranty, 15 months!

It was this witness that urged the FSLIC to take over the troubled S&L. "Your prompt attention to this serious matter is requested." Fifteen months! You can't get much more responsible than that.

I remember the debate, by the way, in this Committee. A few of my colleagues who are present here recall going back to the Reagan Administration—I am trying to recall the Federal regulator who came up all the time and begged us to put more money into

that account—who was it? Mr. Gray came up and begged this Committee to put more money into the account to avoid a catastrophe.

I recall because it has come up on a number of occasions. I remember my colleague, Senator Gramm and I, and I think one other Member of the Committee, actually voted to put more money into that account, much to the disappointment of my constituency groups, to the point that we actually, many could argue, in Congress were not acting terribly responsibly in those days and we could have avoided some of this. That is my own personal view.

But I think it is very important that 15 months before the Fed took action, this witness recommended that the Fed's move in. Then Mr. Faulk in that same interview, when asked by Mr. Camp, "And what about Beverly Bassett Schaffer's role in all of this?"

Here is his statement. Now this is the Federal regulator in Dallas who chaired the meeting in Dallas: "She acted responsible at all times and I don't see how anyone could say, that knew the history of this case, or who would look into the history of the case, could say that she acted irresponsible or delayed or drug her feet in any manner whatsoever."

Again, looking at the totality of all of this, it seems to me that the testimony of Mr. Faulk, the fact that she recommended this 15 months before this happened says volumes about this witness.

Whether or not someone sent a message to someone else and says you ought to hire this person or not, my Lord, all of us on this Committee have certainly called and left messages one way or the other about someone who ought to have a job or not have a job. I hope none of us on this side of the table are going to find that terribly surprising that those things go on. I mean, that is not exactly a great revelation in politics.

What is important is how she did her job. That is important to this Committee. The fact that more than a year before they actually took action she recommended they do so, and that the chief regulator out of Dallas said she did her job well is enough for this Senator. You did your work, and you certainly didn't anticipate 11 years ago that you would be sitting before this Committee and answering for your actions then. So I commend you for your job you did. I think you did a good job.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Just one point. Madison Guaranty Savings & Loan was a State-chartered savings and loan; correct?

Ms. SCHAFFER. Federally-insured; State-chartered.

Mr. BEN-VENISTE. You had certain responsibilities in connection with the fact that it was a State-chartered savings and loan?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. In that connection, the Chief Executive of your department was indeed the Governor?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. And you have explained why it would be important, particularly when there were rumors around in the press about actions to be taken, why the Governor's office and Mr. Bratton who was the person who supervised your regulatory affairs and was the liaison with your department, should be apprised of what was going on; correct?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. Your testimony is that this had been done a year before in connection with two other institutions. I take it those institutions were not being represented by the Rose Law Firm, or Mrs. Clinton, or any such thing?

Ms. SCHAFFER. No.

Mr. BEN-VENISTE. Now with respect to the action that was taken in Dallas in December 1987, it was not to close the bank, was it?

Ms. SCHAFFER. No.

Mr. BEN-VENISTE. It was not something that some insider would perhaps have the opportunity to profit by or manipulate if that insider was advised, and so forth and so on, as we spin out a hypothetical situation, the action that was taken was to remove the McDougals from that institution; correct?

Ms. SCHAFFER. That's correct.

Mr. BEN-VENISTE. Indeed, Mr. McDougal was well aware of the fact that his actions were under scrutiny and he had been so advised for many months?

Ms. SCHAFFER. That is correct.

Mr. BEN-VENISTE. The hope was that he would do something to improve the situation; correct?

Ms. SCHAFFER. Correct.

Mr. BEN-VENISTE. Was there some secret thing that he could do if all of these chains in the hypothetical scenario had been linked up, that he could have done of a harmful nature to the depositors of Madison Guaranty Savings & Loan in the interim between the time of your memo and the time that action was taken?

Ms. SCHAFFER. I think based on the March 1986 examination report, preliminary examination report, the damage had already been done.

Mr. BEN-VENISTE. That is why he was being removed?

Ms. SCHAFFER. That is correct.

Mr. BEN-VENISTE. Indeed, the institution remained open under new management. Is that correct?

Ms. SCHAFFER. Correct.

Mr. BEN-VENISTE. Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. I just have a couple of questions which are kind of general, really, and it gets to the implications and the statements that are not being made as much as those being made today in the questioning of Ms. Bassett Schaffer.

I suppose the question to you, Ms. Schaffer, I mean, I believe it has been made clear, and certainly you have made it clear to me, but just so that we put an underscore and a period at the end of the sentence, did you in any way feel that you were being encouraged or pressured to do something untoward or inconsistent with your job description with regard to this Madison issue?

Ms. SCHAFFER. No, not with regard to Madison, and not with regard to any other matter. In the 6 years that I served as Securities Commissioner, I was the regulator and Bill Clinton was the politician, and that's the way it worked. He did not do that. There was no pressure. There was no fear.

I think they knew full well that I was going to do what needed to be done no matter who liked it, regardless of who it helped or who it hurt. That is, I believe, what he appointed me to do.

Senator MOSELEY-BRAUN. Sometimes it needs to be said again and again, and I think this is an instance in which that happens.

To take it one step further, in addition to being pressured, was there even a wink and a nod, or a suggestion to you to do anything that was not professional and not consistent with your obligations to the citizens of Arkansas?

Ms. SCHAFER. I think the fact that—and I would like to say that I was not deposed by this Committee; I was not given the opportunity before today to see anything—you know, now I understand why, of course—but the note and the fact that Bill Clinton definitely had the opportunity to interfere, or intervene, or to do something untoward or suggest something improper and he did not, is the best evidence that exists that he did not.

Senator MOSELEY-BRAUN. In fact on December 10, 1987, you were the person that wrote to the FSLIC regarding Madison's insolvency?

Ms. SCHAFER. I did. I think the Federal Home Loan Bank had for a number of years delayed and postponed placing institutions into receivership.

Everybody knows now that FSLIC had no money, and it was not until 1987, I believe, when they asked for \$30 billion, or \$50 billion, or whatever, and got \$7 billion in 1987, that until a recapitalization was done, the policy at the Federal level was to delay, to manage, to try to hold onto the situation, and to try to postpone recognition of those losses. That was something unavoidable from their standpoint, but it also had nothing to do with Bill Clinton and it had nothing to do with me or the State of Arkansas.

Senator MOSELEY-BRAUN. Do you not find it just a little ironic that from 1987, here you are that many years later, having done a job that was free of politics, here you are testifying before this Committee because of politics?

Ms. SCHAFER. I am a little distressed by the whole affair.

Senator MOSELEY-BRAUN. Thank you.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

Ms. Schaffer, I can understand your being distressed with this whole affair.

I want to welcome Mr. Brady and Mr. Handley, as well.

I do want to go back, though, to the phone call or the conversation, I think maybe is the way that you referred to it, between Mrs. Clinton and yourself with respect to the question of preferred stock for the savings and loan. I wonder again if you would just kind of lay out for me that conversation?

Ms. SCHAFER. As best I recall, she telephoned me. I was not in the office. I returned the telephone call sometime after lunch that day. In that conversation—I still think it occurred after the 30th, but it really probably doesn't matter—we had, as early as April 3rd, been asked by the savings and loan this question of preferred

stock and whether State law authorized the issuance of preferred stock.

I had a memorandum of April 3rd from Charles Handley going over that question, one he sent to the institution and one he also sent maybe to Rick Massey.

Senator MACK. That was not in reference to Madison? That—

Ms. SCHAFFER. Yes, it was.

Senator MACK. It was? OK.

Ms. SCHAFFER. In which the question was discussed, and Charles had invited them—in his memorandum—had invited them to submit whatever documentation or arguments they had in support of their position.

So when the telephone call—if the telephone call occurred on the 29th of April, then it is true we did not have the April 30th letter at that time. But clearly the issue was before us through Madison, the Savings & Loan, not from the Rose Law Firm.

In the conversation with Mrs. Clinton, what I believe I did was I believe she just identified herself and said they had a matter that was coming, or had been sent, or whatever, depending on which day it was, concerning the preferred stock and whether State law authorized the issuance of preferred stock, just briefly identified it.

I believe that what I said was, generically, generally speak, you know, I'm familiar with that. Charles sent me a memo on it. You know, I think I generally agree, generically.

I didn't say Madison Guaranty's proposal is approved, but generically I think, I did say, that seems to me to be a fairly straightforward question and simply said something to the effect that we'll try to get to it, you know. I didn't get to it until 2 weeks later. But I'll try to get to it and send a letter to that effect. But we did, when the letter came in, then we did further discuss it, the people on my staff and I discussed it.

Senator MACK. Can I ask you one question about that particular point? I think I heard you say earlier something like I generally agree with that, and we'll get the letter out.

Ms. SCHAFFER. I think what I said was we'll respond, we'll send the letter, we'll respond. Something to that effect. And I think the reason I think that's important is because I think that indicates to me, from my recollection, that the fact that she called and she raised the question in my mind didn't influence what I was thinking about the issue in general. But she did ask who would be handling that at the department, which individual should they work with, and I referred her to Charles.

Senator MACK. Mr. Brady, I wonder if I could draw you into this conversation at this point? In your deposition, you had indicated that you thought, in fact, you may have already indicated this morning that it was your opinion that the Attorney General should have been involved or this should have been referred to the Attorney General for an opinion. I wonder if you would tell me a little bit about that, and why you thought that was important?

Mr. BRADY. Yes, sir.

I wasn't so sure that, lacking statutory authority, an Arkansas savings and loan could issue preferred stock. That goes back to my involvement in a case years before that involved insurance companies in which the issue of whether or not they could enter into a

voting trust with their shareholders had come up. It had been decided that they could not, although in the General Corporate Code there was a provision for such a fund.

I felt that this was too far a stretch for us to make as a department on our own, giving them power to do something when everybody knew they could use additional capital. But whether this was the way to do it or not, I had strong feelings.

I suggested the route through the Attorney General's office, because Ms. Bassett would have been protected in reliance upon an Attorney General's opinion that that was an acceptable capitalization practice.

Senator MACK. Why would she need protection? What do you mean by that?

Mr. BRADY. The department was being asked to interpret, as I understood it, a provision of the code of the statutes dealing with State S&L's, and it has always been the practice in Arkansas that if an officeholder relied upon an Attorney General's opinion in making a decision, that they were absolved from any personal liability that might follow as a result of the impropriety of the action.

Senator MACK. I gather from your comment a moment ago that you felt pretty strongly about this, that you then, therefore, informed Ms. Schaffer. I guess you did that through a memo?

Mr. BRADY. Another one of those memos that hasn't surfaced yet. Yes, I did.

Senator MACK. Or maybe it's from a deposition. I don't mean to imply—

Mr. BRADY. Obviously I did that, and she obviously did not agree with my analysis.

Senator MACK. Did you all have discussions about that after the memo?

Mr. BRADY. No, not particularly.

Senator MACK. So you sent the memo, you felt strongly about it, and the letter went out?

Mr. BRADY. I don't say I felt strongly about it. In the letter, I did suggest that this alternative approach to giving the department assurance that they were on sound ground.

Senator MACK. Did you have other situations where you and Ms. Schaffer had differences of opinion where, in essence, Ms. Schaffer went ahead with her particular point of view?

Mr. BRADY. None that I can remember offhand.

Senator MACK. I guess maybe it might be fair here to ask this. How long did you all work together, over what period of time?

Mr. BRADY. When did she become Securities Commissioner? I was at the Department from February 1979 through April 1986, and I don't remember when she became—she was about the third commissioner I worked for.

Senator MACK. Ms. Schaffer, the question that comes to my mind again is, and listen, I've been in positions where obviously I've gotten advice or recommendations or input without the force of any kind of recommendation where people have a different opinion than I did. And like all of us here, we've gone on from our own personal perspective to make those decisions. I'm just curious why you didn't accept the recommendation of Mr. Brady?

Ms. SCHAFFER. Because I accepted the recommendation of my Assistant Commissioner, Nancy Jones, who interestingly enough is not here today.

Mr. Handley, I also talked to Charles about it on several occasions. Charles really is the expert.

Senator MACK. I assume Charles is Mr. Brady.

Ms. SCHAFFER. Charles is right here, Charles is who I relied on heavily on savings and loan matters. That really was Charles' area, and I talked to both. I asked Charles and Charles asked me, and brought it to my attention. My Assistant Commissioner, Nancy Jones, was a CPA. I also had her look at it. There's a note in the file, which nobody has produced. I don't know where it is. I know that it exists. It's not here today I guess. The note indicates that she agrees with the Rose Law Firm's position, that she very clearly thinks that the Business Corporation Code, that that analysis was appropriate.

Charles' comments to me were not that he didn't think that they could do that, but that it might be advisable to do it under the "Wild Card Provision" of the Savings and Loan Act, as opposed to the Business Corporation Code.

That's right, the decision was mine. If we had to ask the Attorney General to pass on routine matters like that that came before the Department, then there would be no need for the Securities Department or the Savings and Loan Supervisor. I mean, you make the decision, you take the heat. There's no need to ask an elected official, an Attorney General at the time who of course, if I had, I guess he'd now be testifying before you rather than me.

The problem here is that there was no influence exerted in this process. It was a normal decisionmaking process in which everybody—disagreement was allowed. I don't think a good decision is ever made unless there is disagreement about it in arriving at the final conclusion.

I would not have asked Mr. Brady. By the way, I have to say that I do not remember any memorandum to that effect. I haven't seen one.

Senator MACK. You are talking about this disagreement about the Attorney General?

Ms. SCHAFFER. Right. I am not saying at all that he might not have. It's just that, as far as I know, nobody has seen it.

Senator MACK. I may have misspoke when I suggested that.

Ms. SCHAFFER. My point is I can't, I don't remember that, and I haven't seen anything to refresh my memory to that effect.

Senator MACK. Again, because my time is up, let me just make one further comment, if I can, without at this point drawing any conclusion.

The problem that we have, as we observe what we have and look over the various documents, there is a memorandum, when you worked for a law firm, which you indicate you don't remember or didn't remember at the time, where you raised questions about the possibility of the breaking of law by an entity controlled by Mr. McDougal. So we have that in our mind.

We also know that you are aware that Madison had financial problems and one could make the argument that's why they were

looking at getting the preferred stock. They needed to build their capital up.

With those two points added to a recommendation within your office that you ought to get an opinion from the Attorney General for something that's never been done before in Arkansas, and then added to that, at least from our perspective, a phone call that comes in from the First Lady, the Governor had appointed you just 4 months before that, and I don't even make the charge about the specifics of the conversation.

It certainly can be a reasonable position to draw the possibility that Mrs. Clinton was merely just kind of subtlety passing on to you, by the way, we have something important that's coming down there, and what I see is when you start adding those things up, plus the other things that we have learned about the whole Whitewater investigation, is that the Clinton Administration, in their Administration here in Washington, we know from the previous discussions about the people in the Treasury Department, that they've been active in using Government information for their own benefit.

So as I say, I'm not going to draw a conclusion at this particular point, but I think there are a series of things that have occurred here that really raise serious questions.

The CHAIRMAN. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Mr. Chairman.

My friend and colleague from Florida says he isn't drawing any conclusions, but he's coming very close to drawn conclusions.

Senator MACK. If I can say to my dear friend, and I mean that, I have not drawn a conclusion. I think I could have been a lot more forceful about what I thought Ms. Schaffer could or could not have done. The point I was making is, not making a statement about what I think the intentions of the witness. I think that was a reasonable thing for me to do this morning. I think it's also reasonable that people can draw some conclusions from the outline that I just stated.

Senator SIMON. First, I'd like to just underscore the exchange between Mr. Ben-Veniste and Mr. Handley. This was at a time when the Federal Government was encouraging savings and loans who were in trouble all over this Nation to issue preferred stock. So this is not some kind of sleazy kind of operation where they are trying to do something untoward.

Second, Mr. Massey testified, maybe if Madison could have had more capital, it could have survived. Mr. Handley, you and your colleagues properly tried to protect and did protect people who might buy stock. And I'm not critical of you for that decision at all.

Ms. Schaffer, when Governor Clinton appointed you, did he have a private conversation in which he said you know I have to call on you for a favor or two while you're over there? What kind of a conversation did you have when he appointed you?

Ms. SCHAFFER. No. The answer to that, let me just get that on the record first. No, he never asked anything like that of me in the 6 years that I was at the department, and he had opportunities to do so on a regular basis.

The conversation was about the problems generally facing the financial services industry and what he expected generally of the office, which was to be tough but be fair. It was the Securities Department, and that was the focus of our conversation. He asked me about my securities experience at the law firm, why I wanted the job, and what kind of a job I felt like I could do with it. There wasn't any discussion about taking care of friends, or I want this done; nothing like that ever took place.

Senator SIMON. There was no hint of anything other than he wanted you to do a good, conscientious job? Is that correct?

Ms. SCHAFFER. That's right.

Senator SIMON. May I ask all three of you, and my colleague, Senator Moseley-Braun, has by implication already asked this of you, Ms. Schaffer, but let me ask all three of you. Did either at any point on Madison or any other issue, did Bill Clinton or Hillary Clinton ask you to do anything either illegal or unethical?

If I can ask all three of you. Ms. Schaffer.

Ms. SCHAFFER. No.

Senator SIMON. Mr. Brady.

Mr. BRADY. No, sir.

Senator SIMON. Mr. Handley.

Mr. HANDLEY. No.

Senator SIMON. Then my final question, and I will yield my time to Mr. Ben-Veniste. I was interested in your comment to my colleague from Illinois, Ms. Schaffer, when you said you were distressed by the whole affair. Meaning, I assume, this hearing and what is going on. What causes that sense of distress for you?

Ms. SCHAFFER. Well, it's personal. I don't think it's been fair to me, actually to the entire State of Arkansas. It's really been very personal, very vicious, it's been an effort to vicariously destroy Bill Clinton piece-by-piece, you know, by ruining the people that he trusted, that worked for him, good people, who didn't do anything wrong. The job's been done very well. A lot of people have been hurt unnecessarily for purposes of winning an election. I just think there's something wrong with that.

Senator SIMON. Thank you.

Mr. BEN-VENISTE. Ms. Schaffer, let me reassure you that we do, in fact, have the note that you are alluding to that came from Ms. Jones and was produced by the FDIC under Bates Stamp number 5000290. Let me put it up for you and provide you with a copy of it. I believe it's the note that you were referring to, but I don't get to testify, you would.

Ms. SCHAFFER. It is.

Mr. BEN-VENISTE. Can you tell us again what the significance of that note is?

Ms. SCHAFFER. When I came to the department, I had a very small staff. It had actually been reduced by about a third before I came to the department. I had a handful of people I could really rely on. The Assistant Commissioner was Nancy Jones. She had been with the department for, I don't know, 15 years. Charles had, I think, been with the department about that long. Those are the people I relied on to participate in decisions like this.

I asked both of them for their input on this. There were conflicting impressions and opinions in the very beginning. Nancy and

Charles had worked together for many years. Nancy Jones was his immediate supervisor, and so I think the importance of this to me was that I felt comfortable with her review of it and her approach to it.

I think she very definitely says in here, I agree with the Rose Law Firm. So as far as I know, she didn't have any relationship with the Clintons; she agreed with the Rose Law Firm. I think the relationship with the Clintons is irrelevant.

Mr. BEN-VENISTE. Let me turn to the fourth point that was made, that they have to get through our registration section and FSLIC too, with an exclamation point. That is the matter to which we have addressed our attention earlier in terms of the capital requirements that have to act as a prerequisite to being able to issue this stock and to use the proceeds of the sale of such stock to satisfy capitalization requirements. Is that correct?

If I understand what you're saying, this was a matter which was discussed by all the people here. There were different views. The one thing that was clear was that this was something which would benefit both the savings and loan and its depositors if it could be done. That it had been done in other States and it was something which the Federal regulators were suggesting should be done to raise capital, one of the few means of raising additional capital would be through the issuance of preferred stock. The manner under which it could be done was the subject of some technical and legal discussions among all of you.

You came to a conclusion that there was an appropriate way to do it, but before that way could be accomplished, there was a prerequisite that had to be satisfied, and that no one attempted to influence you one way or the other, to give favor to Madison in terms of satisfying that prerequisite. They were unable to satisfy the prerequisite and therefore the whole proposition fell and was never implemented. Is that a fair reiteration or summary of what occurred back 10, 11 years ago in Arkansas?

Ms. SCHAFFER. Yes, I think it was handled in a routine manner and nobody at the time was giving it this kind of scrutiny or attention, and I don't remember hearing anybody mention Hillary Clinton's name in our office in considering this matter at all.

Mr. BEN-VENISTE. And for purposes of completeness, we now have, I think, with the exception of the memorandum that you had written a year or so before the situation with Madison came up to Mr. Bratton, hopefully we've been able to show you the materials that you have requested of us.

Senator DODD. Mr. Chairman, quickly, just for clarity, I want to put this memo back up. This is from Ms. Jones? Let me be clear who that's from. This is from Ms. Jones.

Ms. SCHAFFER. She was the Assistant Securities Commissioner. She had been in the office for 15 years or so.

Senator DODD. Civil Service? How does it work down there?

Ms. SCHAFFER. Career.

Senator DODD. Career person worked a number of different administrations?

Ms. SCHAFFER. Several.

Senator DODD. Professional individual?

Ms. SCHAFFER. Yes.

Senator DODD. Was it a political appointee when she got the job initially? How does that work?

Ms. SCHAFFER. No, no, no. Not at all. She is just a State employee, no political appointment.

Senator DODD. I heard you say she was a CPA?

Ms. SCHAFFER. Right.

Senator DODD. Because if you can't read this, if you look at this thing here, there are four points to this note, and this is 1985 now. It's 11 years ago. She talks about Charles. In this note, she's talking about you, Mr. Handley, is that correct?

Mr. HANDLEY. Yes.

Senator DODD. Number one, she agrees with you about the permanent capital stock payable to liquidation. Number two, she disagrees with you that it has to be done through this so-called "Wild Card Statute." Number three, she gets involved in, I guess, the non-voting portion and so forth. Maybe I don't know. And the last point is that you have to go through not only the registration section of the Arkansas statutes but the Federal areas as well. That's the point. Have you seen this memo before, Mr. Handley?

Mr. HANDLEY. Oh, yes, several times. I had several discussions about it.

Senator DODD. OK, Mr. Chairman. I just thought this thing is going to sit out there. I'm trying to follow it.

The CHAIRMAN. I think when our Members are on a particular issue, we want to give them the opportunity to go through it.

Mr. Chertoff.

Mr. CHERTOFF. Do I understand you to say, Ms. Schaffer, that you didn't bring up Hillary Clinton's name in discussions with Mr. Brady or Mr. Handley regarding this issue?

Ms. SCHAFFER. No, you didn't hear me say that.

Mr. CHERTOFF. You did bring up her name?

Ms. SCHAFFER. No, I don't remember discussing, in connection with discussing this matter, that anybody mentioned Hillary Clinton as being a factor in any of this, in what we did. Of course her name was mentioned. Her name was on the letter and she called me, and of course her name was mentioned.

Mr. CHERTOFF. Did you tell Mr. Brady about the call?

Ms. SCHAFFER. I don't know, I probably told him.

Mr. CHERTOFF. Mr. Brady, did you get told about the call?

Mr. BRADY. I didn't understand that it had been a telephone call, but I knew that she had had information from Mrs. Clinton that the Rose Firm was sending over a request on this issue.

Mr. CHERTOFF. Did you hear about the telephone call?

Mr. BRADY. No.

Mr. CHERTOFF. Mr. Handley, did you hear about the telephone call?

Mr. HANDLEY. Not until the newspaper articles came out.

Mr. CHERTOFF. Not until what?

Mr. HANDLEY. The newspaper articles came out.

Mr. CHERTOFF. You mean recently?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Not at the time?

Mr. HANDLEY. No.

Mr. CHERTOFF. You wrote at the top of this memo, which I am glad we have uncovered here, this was Nancy Johnson, you said, or Jones?

Mr. BRADY. Jones.

Mr. CHERTOFF. This is four parts, one through three and four. That's your handwriting, Ms. Schaffer?

Ms. SCHAFFER. Yes, it is.

Mr. CHERTOFF. Part number three talks about a problem not addressed by the Rose Law Firm, having to do with the non-voting portion. That was something that she indicated to you that the Rose Firm had not addressed, correct?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. Right across the top is a notation and it says, "Brady, please review and draft response to Hillary." Is that your writing?

Ms. SCHAFFER. That is.

Mr. CHERTOFF. Is there some reason that you particularly mentioned to Mr. Brady that he should respond to Hillary?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Just an accident?

Ms. SCHAFFER. No, it wasn't an accident, it was very deliberate. She called me. So the response in my mind was to go to her. I didn't have to involve Mr. Brady at all. I could have just written a letter, which I did, Dear Hillary, without ever telling anybody.

Mr. CHERTOFF. Who drafted the response to Hillary Clinton? Who did you ask to draft the response?

Ms. SCHAFFER. I asked Bill to draft the response. Apparently, this is when Bill came to me. He says he wrote a memo. I don't recall any memo. It doesn't matter in any event. This is obviously when Bill came and said, what he's recited today, what he remembers having said. I don't remember that but obviously he had some concern. My impression is that's the reason why I wrote the letter.

Mr. CHERTOFF. So you wrote the letter yourself?

Ms. SCHAFFER. I would not ask Mr. Brady or any other lawyer to write a letter over their signature that they didn't feel comfortable with. I would not write one like that and I wouldn't ask another lawyer to do it either.

Mr. CHERTOFF. You said in your statement that you gave to the RTC at page 2, I referred the matter to the ASD Staff Attorney, Bill Brady, asking him to draft a letter to Hillary Clinton concerning this matter. He drafted a letter which I revised somewhat, signed, and sent to Hillary Clinton. Are you changing that how?

Ms. SCHAFFER. That was my answer based on the best of my knowledge at the time. I did not have the benefit of Mr. Brady's recollection at the time.

By the way, that statement was 2 years ago and 9 years after this conversation had supposedly occurred. To the best of my knowledge at that time, that is what I believed to have happened in 1986 or 1985.

Mr. CHERTOFF. I want to go back to the conversation you had with Mrs. Clinton, which is an important conversation. In that conversation, you've now told us she called you and you returned the call, right?

Ms. SCHAFFER. That's right.

Mr. CHERTOFF. She indicated to you, and I try to take notes, she raised the question with you about this issue in preferred stock, is that correct?

Ms. SCHAFFER. I think, I mean, I have to assume that she defined why she was calling.

Mr. CHERTOFF. So you said to her that you understood, you were familiar with the problem, you were familiar with the issue, and you had a little discussion with her about the substance of the issue, right?

Ms. SCHAFFER. No, I didn't have a discussion. That is why I am saying that we didn't discuss the merits.

The CHAIRMAN. Ms. Schaffer, didn't you say that you had been advised of this matter prior to the phone call because of on-going discussions within the Department? Isn't that correct? In other words, this was not the first time you had heard of this?

Ms. SCHAFFER. That's right.

The CHAIRMAN. That's correct.

Senator SARBANES. When you say "this" Mr. Chairman?

The CHAIRMAN. I'm talking about the matter of preferred stock.

Senator SARBANES. Not the Madison matter, the general question of the preferred stock?

The CHAIRMAN. No. I think the testimony was, and we can have the reporter go back, that the matter, as it related to Madison and the preferred stock, was something that had been within the Department for about a month or so, and had been discussed and it had been brought to the Department through the Madison Bank people, not the Rose Law Firm. That is what I was led to understand you said.

Ms. SCHAFFER. I haven't seen these documents in a number of years. But I've seen them periodically here. But I think that earlier that month, that Charles had had an inquiry from somebody at Madison Guaranty in a telephone conversation. He wrote a memo to them, copied me on it, in which the question was, State-chartered thrifts' authority to issue preferred stock. That's why I am saying that earlier in the month, the issue was already——

The CHAIRMAN. On your radar screen, so to speak?

Ms. SCHAFFER. Well, yes, in generic terms, yes.

Mr. CHERTOFF. So that when Mrs. Clinton, and again we can refer to the court reporter, when Mrs. Clinton brought this up, your testimony was you were aware of this, and you indicated that you didn't see any problem and that you would get an answer within a couple of weeks, you would get back an answer to her.

Ms. SCHAFFER. Well, I think maybe I wasn't specific enough in my response, but I think what I said was that I was familiar with the question, with the issues, you know, generally on that issue. I didn't cite Madison Guaranty's specific proposal, I said generally.

The CHAIRMAN. Because it had been on the radar, and there had been some discussion about whether Madison had not come initially to you personally, but to the Commission, and so consequently Charles had discussed this and sent a memo to you, giving you general notice. So Mrs. Clinton then brought this up to you, that there was going to be this question about preferred stock in Madison?

Ms. SCHAFFER. She must have. I can't remember the exact words but she obviously did because that's the reason she was calling.

Mr. CHERTOFF. In substance, and when you wrote the letter back you responded specifically to Madison, right?

Ms. SCHAFFER. Yes, the letter was concerning a proposal, that they would generate the proposal, but I think it says the State law, in regard to any State-chartered savings and loan.

Mr. CHERTOFF. Is that in reference to a specific proposal about Madison, right?

Ms. SCHAFFER. Well, we have the letter.

Mr. CHERTOFF. Let me ask you, when Mrs. Clinton said to you what this was about, and you indicated you were familiar with it, you also said—and it is in the record, we had it a couple of hours ago—that you agreed with her. Let's put the letter up. It is marked Bates Stamp 84.

The CHAIRMAN. Can we get Ms. Schaffer a copy of the letter, please?

Ms. SCHAFFER. I have the letter in front of my eyes.

The CHAIRMAN. Why don't we make sure she has that letter because it's tough reading it off that screen.

Mr. CHERTOFF. It says:

Re: Authorization and Issuance of a Class of Preferred Stock by Madison Guaranty ("Madison"), a Savings and Loan Association chartered under the laws of the State of Arkansas.

Dear Hillary:

I have reviewed your letter of April 30, 1985, regarding the proposed authorization and issuance by Madison of a class of non-voting preferred stock.

You then have a discussion, and you conclude:

Accordingly, as the Savings and Loan Supervisor, I concur in your opinion that Madison's proposed capitalization plan is not inconsistent with Arkansas Law.

That is what you wrote, correct?

Ms. SCHAFFER. Except that we did not have a specific proposal in front of us.

Mr. CHERTOFF. So you approved a proposed capitalization plan without having a proposal?

Ms. SCHAFFER. Of course not.

Mr. CHERTOFF. It says right up here, a proposed capitalization plan is not inconsistent with Arkansas law.

Ms. SCHAFFER. I think you have to—that that's not fair. That is unfair.

Mr. CHERTOFF. Am I misreading it?

Ms. SCHAFFER. Yes.

Senator SARBANES. You are partly reading it. Why don't we read the whole letter.

Mr. CHERTOFF. I'll be very happy to read the whole letter.

Ms. SCHAFFER. You can read it.

Senator SARBANES. The front part of paragraph 2 to which you read the conclusion.

Mr. CHERTOFF. I'm very happy to do it.

Senator SARBANES. Let's do that.

Mr. CHERTOFF. You wrote:

I agree with your analysis and conclusion of the question whether an Arkansas-chartered savings and loan association may under Arkansas law create, authorize, and issue a class of preferred stock. Arkansas law expressly gives State-chartered associations all the powers given regular business corporations under the Arkansas

Business Corporation Act, including the power to authorize and issue preferred capital stock. Further, there is no express prohibition against such action contained in the Arkansas laws governing building and loan, and savings and loan associations.

Accordingly, as the Savings and Loan Supervisor—

That was you, right?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. You say:

I concur in your opinion that Madison's proposed capitalization plan is not inconsistent with Arkansas law.

Now, is it your position that you did not understand that this inquiry was with reference to a specific question of issuing preferred stock by Madison Guaranty?

Ms. SCHAFFER. It is not my understanding. It is a fact. There was no proposed specific capitalization plan. That came later when we had to determine how much capital they had to raise.

Mr. CHERTOFF. You knew that Madison wanted to issue capital.

Ms. SCHAFFER. Of course I knew they wanted to issue preferred stock.

Mr. CHERTOFF. I was going to say, Mrs. Clinton called you up on the telephone and you had a conversation with her and you told her you were familiar with the issue, correct?

Ms. SCHAFFER. To the best of my knowledge.

Mr. CHERTOFF. You told her, in earlier discussions you had had with people, people at Madison Guaranty—

Ms. SCHAFFER. Not with her, yes.

Mr. CHERTOFF. But you told her, right?

The CHAIRMAN. You said yes?

Ms. SCHAFFER. Yes.

The CHAIRMAN. Counsel let me finish.

Specifically not with her but with other people Madison had with the Department?

Ms. SCHAFFER. That's right.

The CHAIRMAN. Go ahead.

Mr. CHERTOFF. But you informed Mrs. Clinton of that in the telephone call?

Ms. SCHAFFER. Of what?

Mr. CHERTOFF. I will take it slowly. In the phone call with Mrs. Clinton, you told Mrs. Clinton you were familiar with the fact that Madison had raised this issue of issuing preferred stock?

Ms. SCHAFFER. No, I disagree, no.

Mr. CHERTOFF. Did you tell her—

Ms. SCHAFFER. The conversation didn't last that long. I believe what I said was generally it was not a specific proposal we were talking about. The issue—no, I disagree.

Mr. CHERTOFF. Look, you had discussions with people. You knew Madison wanted to issue the preferred stock, right?

Ms. SCHAFFER. Absolutely.

Mr. CHERTOFF. You had some discussion with people from Madison before you talked to Mrs. Clinton about it, right?

Ms. SCHAFFER. No, I had not.

Mr. CHERTOFF. Someone in the Department had?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. You were aware of it, right?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. When Mrs. Clinton called you, you knew what she was calling about, right? She told you and it rang a bell?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. You told her, yes, I am familiar with that? We have had discussions in the Department about Madison's interest in issuing preferred stock, right?

Ms. SCHAFFER. No, I can't remember if I said we. I am familiar with the issue.

Mr. CHERTOFF. And then she?

Ms. SCHAFFER. I believe that it's a very simple, straightforward issue that—and basically I agree with the analysis.

Mr. CHERTOFF. You agreed with the analysis?

Ms. SCHAFFER. Mr. Chertoff, this was 11 years ago.

Mr. CHERTOFF. As fully as you can, tell us?

Ms. SCHAFFER. I think I have done it as fully as I can. The gist of it was that she identified why she was calling, and I simply said something to the effect of I am familiar with that. I think—as the way I would describe it as being something I already knew about and had, I mean, a very simple issue that I had looked at. Beyond that there wasn't any discussion of a specific proposal or a specific Madison's involvement in it. We didn't talk about Madison Guaranty as a specific interest or proposal.

Mr. CHERTOFF. You used the phrase a moment ago, you said that you had agreed with the analysis and I am just trying to ask you, in the conversation that you had with Mrs. Clinton, there was a reference in the conversation to an analysis, correct?

Ms. SCHAFFER. Mr. Chertoff, I'm doing the best I can.

Mr. CHERTOFF. I understand.

Ms. SCHAFFER. To give you the context. I can't give you the precise dialogue.

Mr. CHERTOFF. Not precisely, generally.

Ms. SCHAFFER. The context was that I was already familiar with the question of whether a State-chartered savings and loan could issue preferred stock. That that issue was out there, was something that needed to be resolved, and I was comfortable with, I was comfortable myself with that. I don't know that I said an analysis. What I think I indicated was my comfort with the concept.

The CHAIRMAN. Ms. Schaffer, we are going to turn this over to the other side, but is it fair to say that you had reached a conclusion about the general proposition as it related to the issuance of preferred stock for a savings and loan? Is that what you're saying? In other words, you had a certain comfort. I'm not putting words in your mouth, I hope? Is that fair to conclude? Is that what you meant, that you had a certain comfort level?

Ms. SCHAFFER. I think so.

The CHAIRMAN. At that point, when you spoke to Mrs. Clinton, you said basically I have an understanding of the issuance of preferred stock. Now, you knew though that this was in reference to Madison?

Ms. SCHAFFER. I did.

The CHAIRMAN. All right.

Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me take this a step further. At the time of your conversation, there had been some discussions, not with Rose Law Firm employees or attorneys, but with Madison Guaranty personnel and your Department?

Ms. SCHAFFER. I think, perhaps, Mr. Massey was part of those conversations with Charles Handley.

Mr. BEN-VENISTE. You were not a part of the conversations?

Ms. SCHAFFER. I believe my information came through Charles.

Mr. BEN-VENISTE. Mr. Handley, before Mr. Massey came into the picture, had there not been some inquiry from Madison employees?

Mr. HANDLEY. Yes. During my depositions by various parties, I have seen a copy of the handwritten memo and the Employees' Association phoned me up the first of April and said, "We want to think about issuing preferred stock. Do you have a form? What do we have to do?" I told them I would have to look at that. I didn't know whether they could, but we would welcome a filing made by them, and a legal opinion.

Mr. BEN-VENISTE. So that sort of started everybody thinking?

Mr. HANDLEY. And I gave a copy of that to Beverly.

Mr. BEN-VENISTE. Now, Ms. Schaffer, when you wrote your letter to Mrs. Clinton, you were saying, if I understand your testimony, that you had looked at this, you had considered it from the standpoint of legality and practical possibilities that you agreed that this was something that was doable?

Ms. SCHAFFER. Right.

Mr. BEN-VENISTE. This wasn't a letter that you sent to say OK, you go and tell Mr. McDougal he can go sell the stock? It's not the way it worked?

Ms. SCHAFFER. Not at all. The position that was taken here—obviously there was a public policy question, there was a matter of public interest, and there was something that if it was OK to issued preferred stock, it might be done by any other State-chartered savings and loan, and in fact, it has been done since then by other State-chartered savings and loans. The opinion was in general terms: Can this be done?

Mr. BEN-VENISTE. So the proposal that was talked about is the proposed concept that this could be done by a Federal savings and loan in Arkansas regulated by the State authorities, State chartered?

Ms. SCHAFFER. Right. I did understand, as Senator D'Amato has pointed out, I did understand that Madison intended to do that.

Mr. BEN-VENISTE. They were going to pursue it.

Ms. SCHAFFER. Right.

Mr. BEN-VENISTE. The idea was, you don't have to worry about spinning your wheels, OK. This is something that can be doable. But to mix a metaphor, there are other hoops that have to be jumped through, as Mr. Handley, Mr. Brady, you, and Ms. Jones all got together and worked out. And that had to do with raising additional capital to meet Federal requirements that were even more stringent than State requirements, correct?

Ms. SCHAFFER. Correct.

Mr. BEN-VENISTE. So it would be overly simplistic to say anything beyond this but that, OK, the checkered flag is coming down, you can start the race. Go and work out the details, fill out the

forms, follow the regulations, but in theory, this is a proposal upon which you can get started and try to perfect?

Ms. SCHAFFER. Right. Obviously, there would be no point in pursuing a specific offering of preferred stock if the State was going to take the position that it was not allowed, that that instrument could not be issued by a State-chartered savings and loan. There would be no point in pursuing any effort to raise capital in that manner.

Mr. BEN-VENISTE. All this did was to give the green light to go further on this proposal?

Ms. SCHAFFER. Right.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you.

Ms. Schaffer, your responsibility to the State of Arkansas, as Commissioner of Securities—is that the correct title?

Ms. SCHAFFER. That's correct.

Senator MURKOWSKI. Was to protect investors with regard to any issuance of stock, and I assume you had on-going knowledge of the difficulties associated with Madison S&L, is that correct?

Ms. SCHAFFER. I did.

Senator MURKOWSKI. I'm curious with regard to the two exhibits that have been before you. One is your letter of May 14th, and the other is a letter from Mrs. Clinton on May 23rd. You indicate in your letter, I concur in your opinion, and that is referring to whom?

Ms. SCHAFFER. Well, the letter is addressed to Hillary.

Senator MURKOWSKI. So one could deduce that there was an opinion that you had received from Mrs. Clinton?

Ms. SCHAFFER. I did. The letter that came April 30th was signed Rose Law Firm. It wasn't signed by an individual lawyer but it is in that letter in which the analysis of the Rose Law Firm was.

Senator MURKOWSKI. They did give you an opinion as to the merits of the transaction?

Ms. SCHAFFER. It was just an analysis of the relationship between the Arkansas Savings and Loan Laws and the Arkansas Business Corporation Code.

Senator MURKOWSKI. Would you acknowledge that this opinion, since you referenced it in your letter to Mrs. Clinton, was some of the substantiation that you used to basically approve the so-called Madison capitalization plan?

Ms. SCHAFFER. I didn't approve a Madison capitalization plan. Specific—

Senator MURKOWSKI. It says, from the letter, I concur in your opinion that the proposed Madison capitalization plan is not inconsistent.

Ms. SCHAFFER. We did not have before us a specific capitalization plan. The concept, that is what that means. Perhaps inartfully worded, but it means the concept.

Senator MURKOWSKI. In other words, you did not know the amount of capitalization?

Ms. SCHAFFER. And the form of the instrument would have to have been acceptable, the disclosure document, a number of things.

Senator MURKOWSKI. Going back and making a reference to the opinion, the opinion was drafted by the Rose Law Firm. Do you know the involvement, or did it bear the signature of Mrs. Clinton?

Ms. SCHAFFER. The signature was the Rose Law Firm. It was not signed by an individual attorney. It said the Rose Law Firm. If you have any questions please contact Richard Massey or Hillary Rodham Clinton at this law firm, I believe.

Senator MURKOWSKI. Why did you respond in a letter to Mrs. Clinton specifically then if you were getting an opinion just from the Rose Law Firm? Why was Mrs. Clinton selected as the respondent to your letter?

Ms. SCHAFFER. I obviously could not address the letter, "Dear Rose Law Firm." I suppose I could have addressed it to Rick Massey, although my conversation was with Hillary Clinton.

Senator MURKOWSKI. OK. While the opinion that was submitted didn't bear her signature, you had conversations with Mrs. Clinton regarding the preferred issue?

Ms. SCHAFFER. Right.

Senator MURKOWSKI. And in that series of discussions, there was no indication of what the necessary capitalization requirements might be?

Ms. SCHAFFER. In this letter? In my letter?

Senator MURKOWSKI. In your letter there isn't, but I am curious to know in the opinion, you say I concur with your opinion.

Ms. SCHAFFER. No, no, no. The opinion was just an application of State law. It had no reference to a specific dollar amount. That would have been the specific proposal I would have been looking to get later.

Senator MURKOWSKI. Now on May 23rd, we have a letter here that says, "Enclosed is a letter for your files"—and this is to Jim McDougal—I believe you have seen this letter from Hillary Clinton, dated May 23rd? If not, perhaps—

The CHAIRMAN. Can we identify that?

Senator MURKOWSKI. This is a letter dated May 23rd from Mrs. Clinton to Jim McDougal.

Ms. SCHAFFER. Obviously, I haven't seen the letter.

Senator MURKOWSKI. I assumed maybe you had in the course of the hearing today.

The CHAIRMAN. Do we have copies for the Members too, please? Do you have it? OK. I don't have it.

Senator MURKOWSKI. This letter comes 9 days after your letter to Mrs. Clinton, which you have before you. And this letter is from Mrs. Clinton to Mr. Jim McDougal and it says: "Enclosed is a letter for your files from Beverly Bassett, approving the proposed authorization."

Now if one looks at the word "approved," one would assume that it has some term of approval associated with it, rather than just a conformance to Arkansas State Law, that it's OK to issue preferred stock from an S&L. Would you suggest that Mrs. Clinton was a little ahead of herself in writing a letter and using the word "approved"?

Ms. SCHAFFER. No, I think it's just generally confusing, the concept being approved from a specific proposal being approved. If the concept was not allowable, then there's no need in developing a

specific proposal. So I am not going to quarrel with the use of the word "approving." I think we can quibble over that.

The concept was what——

Senator MURKOWSKI. Clearly at the time this letter was written, you had not approved much of the preferred issue, including the capitalization amount. Is that a fair statement?

Ms. SCHAFFER. We did not have a proposal as to the dollar amount, the method in which it would be placed, the disclosures.

Senator MURKOWSKI. So it really wasn't approved then?

Ms. SCHAFFER. No.

Senator MURKOWSKI. As the reference to the terminology here?

Ms. SCHAFFER. The concept that they wanted to utilize of going forward with issuing a class of preferred stock, I believe my letter does——

Senator MURKOWSKI. You referenced that quite clearly, that it's appropriate with Arkansas State law. My concern is the letter from Mrs. Clinton to Mr. McDougal, where she says, "Enclosed is a letter for your files from Beverly Bassett approving the proposed authorization." But at that time, you had not approved it. The amount had not even been determined. Is that correct?

Ms. SCHAFFER. That's correct.

Senator MURKOWSKI. Just very briefly, as far as your obligation as Commissioner of Securities, when the protection to investors you scrutinize the risk, is that right? Do you do a due diligence?

Ms. SCHAFFER. No, not on a private placement.

Senator MURKOWSKI. Now, do you depend on attorneys to do due diligence?

Ms. SCHAFFER. Well, due diligence is done by the attorneys for the client.

Senator MURKOWSKI. Do you review those?

Ms. SCHAFFER. Yes.

Senator MURKOWSKI. Had you done so in this case?

Ms. SCHAFFER. It was never submitted.

Senator MURKOWSKI. It was never submitted?

Ms. SCHAFFER. Right.

Senator MURKOWSKI. So even at that point, had you had an opportunity to measure the risk, based on the information you had relative to the issuance of the proposed stock? That's part of your job, wasn't it, to kind of measure what the risks would be?

Ms. SCHAFFER. I would disagree with that characterization.

Senator MURKOWSKI. OK, tell me.

Ms. SCHAFFER. It would have been our job to see that the risks, whatever they were, were disclosed.

Senator MURKOWSKI. Had you gotten that far in this case of examining?

Ms. SCHAFFER. No.

Senator MURKOWSKI. So you never really got very far?

Ms. SCHAFFER. No. They never even submitted the disclosure document or registration exemption requests that would have entailed all those sorts of things.

Senator MURKOWSKI. The reason was the S&L failed before that happened, is that correct?

Ms. SCHAFFER. No, it did not. We gave them until the end of December 31, 1985, to accomplish that, and the time expired, and they had not completed it, or they didn't do it.

Senator MURKOWSKI. There was no request to extend it?

Ms. SCHAFFER. No.

Senator MURKOWSKI. Can you just explain, in conclusion, a series of events, your appointment process has got some inconsistencies in it that probably are quite easily explained. I think you indicated you met Clinton back in 1974 or thereabouts and did some volunteering?

Ms. SCHAFFER. Yes.

Senator MURKOWSKI. You also worked for him as a law clerk in 1977 when he served as Arkansas Attorney General?

Ms. SCHAFFER. Yes.

Senator MURKOWSKI. Your brother, Woody Bassett, is a friend and supporter of the former Governor?

Ms. SCHAFFER. Yes, he is.

Senator MURKOWSKI. You are aware that your brother wrote not one but two letters to Governor Clinton and urged that you be appointed to the position of Arkansas Securities Commissioner?

Ms. SCHAFFER. Yes, I know that he did that.

Senator MURKOWSKI. There's apparently a reference in one of the letters that your brother wrote to Governor Clinton, there's a handwritten note from Governor Clinton at the top of the letter. Have you seen that?

Ms. SCHAFFER. No.

Senator MURKOWSKI. Perhaps it would be appropriate for us to provide that.

On the note, as I read it, it says, "She'd be good but may need to do something else." Do you see that up there?

Ms. SCHAFFER. No.

Senator MURKOWSKI. I wonder if one of the staff could point it out? It is very poorly written, but that's what I conclude it reads. Have we got anybody down there.

The CHAIRMAN. Now, she's taking a look at it. It's right up at the top, the initial handwriting.

Senator MURKOWSKI. That's correct.

The CHAIRMAN. Right on the first line. "She'd be good but may need to do something else."

Senator MURKOWSKI. And then it has BA. Have you seen that or are you familiar with that notation?

Ms. SCHAFFER. No.

Senator MURKOWSKI. "She'd be good but may need to do something else." Do you have any question whether that refers to you or not?

The CHAIRMAN. I think in fairness, you haven't seen this letter, at this point, it would appear to be a letter written by your brother.

Ms. SCHAFFER. Right.

The CHAIRMAN. In which he's asking you to be considered for the appointment of Arkansas Securities Commissioner.

Senator MURKOWSKI. "I would like to submit the name of my sister, Beverly, for your consideration as the next Securities Commissioner." Is what it reads the last sentence of the first paragraph.

Then we have this notation on the letter which I can only assume that Governor Clinton noted.

Ms. SCHAFFER. Right.

Senator MURKOWSKI. You have no explanation of why he would consider you for something else?

Ms. SCHAFFER. No, I think that means I might not get it. I think that means he might appoint somebody else.

Senator MURKOWSKI. It's certainly complimentary. It says, "She'd be good but may need to do something else."

Now would you agree that a comment by the Governor doesn't say that you necessarily got the job. In fact, it sounds like at that point, that you probably wouldn't be considered for the job. One might conclude that at least. I think that's a fair analysis, because otherwise he'd say she'd be good for the job. He says, "She'd be good for the job but we may need her to do something else."

Senator SARBANES. It doesn't say that necessarily.

Ms. SCHAFFER. I think that it means he may need to appoint someone else.

Senator MURKOWSKI. That's fair enough.

Are you aware that a few weeks later, Jim McDougal leaves a phone message to Governor Clinton that says, "Beverly Schaffer for Securities Commissioner."

Ms. SCHAFFER. I testified that I had no idea that Jim McDougal had any reference to my name, used my name, made any—

Senator MURKOWSKI. We have, I gather, a copy of that phone message, and that phone message to Governor Clinton says, "Beverly Schaffer for Securities Commissioner." And you have not seen that?

Ms. SCHAFFER. No.

Senator MURKOWSKI. Do you have any comment with regard to that?

Ms. SCHAFFER. I was never told about it. I certainly didn't ask for it, and I wouldn't have wanted it, had it been offered. So—

Senator MURKOWSKI. You mean from McDougal?

Ms. SCHAFFER. That's right.

Senator MURKOWSKI. You don't really know McDougal?

Ms. SCHAFFER. I have never met Jim McDougal. I don't think I have been in the same room with him.

Senator MURKOWSKI. Can you give any explanation of why Mr. McDougal would be communicating this to the Governor?

Ms. SCHAFFER. Well, no. Obviously I can't answer that.

Senator MURKOWSKI. No conjecture. OK.

Yet a few weeks after Mr. McDougal's telephone message, the Governor's office sends out a press release that announces you as the new Securities Commissioner, and I guess that's just the way things happen.

Ms. SCHAFFER. Jim McDougal had nothing to do with my appointment as Arkansas Securities Commissioner.

Senator MURKOWSKI. So it is just a coincidence that he would communicate to Governor Clinton, "Beverly Schaffer for Securities Commissioner."

Ms. SCHAFFER. I don't know what it is, but it had nothing to do with my appointment, I believe. I believe that I got the appoint-

ment, my brother asked for it, I don't believe Jim McDougal's telephone call had anything to do with the decision.

Senator MURKOWSKI. At least it appears to have been a communication on your behalf. Whether it had anything to do with the Governor's decision, we'll never know.

Thank you, Mr. Chairman.

One other question. How do you know that McDougal didn't have any influence? I mean, you seem pretty convinced of that. You didn't know McDougal. How do you know he didn't have any influence? He says he did.

Ms. SCHAFFER. Well, OK. I guess that's something this Committee can resolve.

Senator MURKOWSKI. Fair enough. Thank you.

The CHAIRMAN. Senator Dodd.

Senator DODD. Mr. Chairman, I want to go back, and maybe just put up the 7/2/86 note. I'd ask the staff to put that one up.

The CHAIRMAN. Which note is that?

Senator DODD. That's the handwritten note.

The CHAIRMAN. OK.

Senator DODD. The reason I am putting it up, Mr. Chairman—he's not here now, but our colleague from Missouri raised the point here that this note to Sam—

The CHAIRMAN. If I might just ask my colleagues' indulgence. We have had the witnesses up here for an awfully long time because we want to try to get through this, so just to give you a sense of where we are, after Senator Dodd and Senator Sarbanes have an opportunity during this next 10 minutes or so, why don't we take a 5- or 10-minute break?

Mr. HANDLEY. Mr. Chairman, I'd like that.

The CHAIRMAN. I just wanted to let you know for your own well being.

Thank you, Senator.

Senator DODD. Thank you, Mr. Chairman.

As I understand it, this note, Ms. Schaffer, had attached to it a letter from Federal Home Loan Bank of Dallas. Is that correct?

Ms. SCHAFFER. Yes.

Senator DODD. The implication was, by our colleague from Missouri, of course, that by transferring this letter from the Home Loan Bank Board to Sam here in a sense, you're giving, through the back door, a heads-up to Mr. McDougal that he might be in trouble. That was the implication, as I heard it, from our colleague in Missouri.

The point I want to make, Mr. Chairman, if I can, I don't know if staff has this, but to put in the record at this point, a letter dated June 19, 1986, several weeks before the July 2, 1986 memo, in which the Federal Home Loan Bank Board of Dallas sent the identical letter to the Board of Directors of Madison Guaranty Savings & Loan. The point being, obviously, you are not revealing something to Mr. McDougal. He had already been sent the very same letter by the Federal Home Loan Bank Board in June. So the implication here that they were somehow providing backdoor information to Mr. McDougal is just not borne out by the facts.

The CHAIRMAN. I don't think, Senator Dodd, that that was the point Senator Bond was making, but rather the question, and I

think it did come up, and Ms. Schaffer did indicate that she really wanted to warn the Governor about this problem, and McDougal might be attempting to get to him. I wrote it down, and I'm going to speak to her about that later. She just wanted to warn him.

Senator DODD. The point is that McDougal had gotten a letter in June, so you couldn't very well tell Mr. McDougal something.

The CHAIRMAN. Look, McDougal had gotten warnings before. He knew about it. I don't think that was the point that Senator Bond was attempting to make.

Senator DODD. I don't know. At this point, at any point, that this seems appropriate. The June 19th letter to the Board of Madison Guaranty, so it will make it clear in terms of the sequence.

The CHAIRMAN. Why don't we put that in the record—oh, they tell me, it is in the record.

Senator DODD. That's the point I wanted to make. It seemed to me, when that was raised, it sounded like, well this could be a problem because if you'd given Mr. McDougal a heads-up about something from a State regulator, that poses real problems. But I didn't realize—

The CHAIRMAN. He had a heads-up. He already knew about this.

Senator DODD. That's very, very important.

The CHAIRMAN. By the way, I don't mean a heads-up improperly. He obviously was in frequent contact with Federal regulators who had noted both to the State Commission, as well as to himself and to his Board, that they had serious problems.

Senator DODD. Here's my problem, because here you have today, 1252, the wire service story about his testimony, and the update with Ms. Schaffer giving the Governor's office early warning about Fed's moving at the savings and loan owned by Clinton's White-water partner. So the press is missing it. You may think so, but the stories are going out suggesting somehow that the sending of that letter to Sam from the Federal Home Loan Bank Board was giving the Governor a heads-up. That's wrong.

The CHAIRMAN. No. It was, I believe, whether properly or improperly, whatever the motivation, and we are not going to ascribe anything to that, that the Commissioner has testified that she wanted the Governor to be aware of his liaison and the fact that McDougal and his bank were in trouble. She wanted him to know that. That wasn't a question of—was that not your testimony, Ms. Schaffer?

Should we take a little break now?

Senator DODD. Let me just finish the point. Isn't that the danger here? It's not so much the Governor knowing about it, it's the Governor then letting Mr. McDougal know about it.

The CHAIRMAN. I don't think that's the point at all, not at all. But we'll get into that.

Senator SARBANES. Let me make another point. The Governor was the Chief Executive Officer of this department.

The CHAIRMAN. Listen—

Senator SARBANES. An effort's been made here, I think, I'm very frank to say that consistently tried to lead Ms. Schaffer down certain paths. I think she's trying very hard to give her answers to these questions, and I think she ought to be allowed to do that. We can then evaluate it. But I don't think this questioning that we

have been through about this authorization with respect to preferred stock is incredible. She's been very clear on that point. What they approved was that the concept of preferred stock could be done, as I understand it. Is that correct?

Ms. SCHAFFER. That's correct.

Senator SARBANES. And there's been a repeated effort made here to turn that into the approval of some sort of specific proposal that was never before them. You never had a specific proposal before you, did you?

Ms. SCHAFFER. No.

Senator SARBANES. Did you ever approve a specific proposal?

Ms. SCHAFFER. No.

Senator SARBANES. If you didn't have it before you, how could you approve it? So the only thing that was approved was the analysis of Arkansas law under which a State-chartered association could issue preferred stock. Is that correct?

Ms. SCHAFFER. Correct.

Mr. BEN-VENISTE. Indeed, with respect to this confusion that Senator Dodd has cleared up now, I think it was raised by the suggestion that some confidential document from the Federal Home Loan Bank Board might make its way in some untoward way to Mr. McDougal so that he could take some action to thwart the regulators. Was this mythical construct that is completely repudiated by the fact that they communicated directly to Mr. McDougal and had been for quite some time telling him that the day of reckoning was going to come. Then, kaboom, it came, right?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. With respect to the matter that Senator Sarbanes raised, this was documented in communications between your department and both the Rose Law Firm and the bank, that is that there were requirements that they needed to meet, that they had a specific timeframe to meet those requirements, and when they were approaching the time cutoff, you advised them.

Let me show you RS000648. If we could put that up, please, and provide Ms. Schaffer with a copy.

Here is a letter dated December 9, 1985, from you via Mr. Handley to Mr. Massey, that specifically advises that you need to receive the progress and status of Madison's \$3 million preferred stock issue and steps taken to meet the Federal Home Loan Bank Board's minimum net worth requirements.

Since the Department has not yet received a filing for the preferred stock issue, we are concerned about the ability of Madison to complete the sale of such stock and meet the minimum net worth requirements of the Bank Board by December 31, 1985, as earlier agreed.

That is what you are referring to in your testimony, correct?

Ms. SCHAFFER. Correct.

Senator DODD. Just on that point, has this letter been around for awhile?

Mr. BEN-VENISTE. Since 1985.

Senator DODD. I understand, but part of the hearing record, I mean, we spent at least an hour or an hour-and-a-half on this question of the word "approval." Yet here's a letter dated December from the State Securities saying you haven't filed. Why would you

spend an hour-and-a-half asking the question when this letter's sitting here? I don't understand that.

Senator SARBANES. We've spent time on questioning Ms. Schaffer that why, when she got a letter from the Rose Law Firm, she sent a letter back to Hillary Clinton. And the sentence in the Rose Law Firm letter, before the signature, says, "Should you require further information or assistance, please advise Hillary Rodham Clinton or Richard Massey of this firm."

We had all this questioning, you know, it said Rose Law Firm. Why did you send it back to Hillary Clinton. As Ms. Schaffer said, she couldn't send it back to Dear Rose Law Firm.

Senator DODD. I didn't realize this letter was there. But if you have a letter, and staff had these matters, it answers the question. Why are we spending an hour-and-a-half on a question that's being answered by the very letter sent by the State Securities Office that answers the question. What's the point of that? Here it is saying, are you going to file in December, are you going to file. You can't approve something that hasn't been filed. That's appalling. Let's stop that.

The CHAIRMAN. We have allowed Senators and Counsel to go over their time to complete subject areas but we have gone well over. I believe there should be a response to certain questions.

Number one, Senator Bond was not raising a question in that manner. There is a very legitimate question concerning whether Mrs. Clinton asked Ms. Schaffer about the issuance of preferred stock and whether she spoke to her about that in connection with Madison Savings and Guaranty.

Now the record is complete. I won't characterize Ms. Schaffer's response. She said this basically had been on the radar screen, and that she was familiar with it and that she would get back a response, and she didn't see any problem.

So the question was, did the Department, at some point, approve or say it would be proper for Madison to go forward with a preferred stock offering, with the details of the plan obviously to follow.

That's the manner in which it was put. No one suggested that there was a particular plan. Ms. Schaffer was quite clear there had not been a particular plan. Thereafter, they became engaged in that process and various concerns were raised.

I will say to you that there are very legitimate questions as it relates to this bank and its owner.

Senator SARBANES. But those are not to Ms. Schaffer.

The CHAIRMAN. No one said that. Wait a minute, Senator, I listened to you. I didn't interrupt. And I did not say Ms. Schaffer.

Senator SARBANES. I understand that, but this woman has been berated at this table. A note ought to be made that she's been consistently berated here this morning.

The CHAIRMAN. Senator, there is no need for you to raise your voice, especially with me.

Senator SARBANES. At some point—

The CHAIRMAN. Senator—

Senator SARBANES. —when a witness has been subjected to this kind of treatment, something needs to be said about it.

The CHAIRMAN. Senator, are you suggesting that the Chairman has in any way abused the Commissioner? As a matter of fact, on a number of occasions, I have attempted to provide time for the witness to see documents that she was asked a question about. I have attempted to provide an atmosphere in which she could testify freely.

Senator SARBANES. Mr. Chairman, you haven't been doing the questioning. The abuse has come in the questioning.

The CHAIRMAN. I'm sorry you characterize it that way, but I only was attempting to make a point.

There is a very legitimate question concerning the appropriateness of the Commission's action, even, at least in my mind—and we're going to explore this and take a brief break—its saying Madison can go forward with a preferred stock plan, given the fact that the weaknesses of the bank was already documented.

Also, it would appear to me—excuse me, you can make your point—I think I have probably spent the least time of any of the Senators making observations or asking questions. So I don't think it is inappropriate, and it is on my time, to be permitted to do that.

But there's a very real question as it relates to whether, given the Commission's knowledge as it relates to Mr. McDougal himself, and previous actions, they should have gone ahead and said, yes, you can move forward with a stock plan for Madison Guaranty. I believe that we should explore that, and I will when we come back from the recess.

So we'll take a 5-minute recess, and maybe we can all calm down a little when we come back.

[Recess.]

The CHAIRMAN. I'm waiting for Counsel, but I'm going to call on Senator Dodd who has an observation or a question.

Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

Going back to the point I made about this, I appreciate that our Counsels and staff follow all these matters. I was not aware of the letter from Mr. Handley or Mr. Brady to Mr. Massey, if I recall, saying when are you going to file.

The reason I brought that up is because it seems to me the issue that was raised, I think it might have been Senator Murkowski that raised the issue about whether or not the approval that you wrote, Ms. Schaffer, was approval of a specific plan.

My point was that the question was answered by a letter that had come from the Department in December, saying where's the filing. So you couldn't be writing a letter in a sense approving something that hadn't even been filed, as the later letter indicates.

The second point, Mr. Chairman, I was going to raise, and I thought it's coincidental, but there is a letter from an analyst by the name of John Mitchell to the file, "Subject: Madison Guaranty, dated April 3, 1985." Because the issuance of the preferred stock—that date is the very date, there's another inquiry, as it just happens, on that specific date. This is to you from Charles, regarding this question of whether or not a State-chartered savings and loan association can issue preferred stock.

Interestingly, just to the file, the analysts at the Federal Home Loan Bank Board were analyzing this whole question, and in fact,

specifically on this issue. The Madison Guaranty, this memo says, and I am quoting from it, "The Association plans to issue \$600,000 of preferred stock, for which the buyer is awaiting issuance, and a second issue of an unknown amount will follow shortly thereafter."

The memo says the S.A., that is, the analyst here indicated general satisfaction with Madison's business plan, as well as corrections and improvements.

So while the State agency is inquiring as to the legality of this, the Feds are actually promoting or, at least, endorsing the idea. And as we know from previous history, of course, they promoted this idea generally around the country as a way to try and avoid the drain that we saw happen when these institutions failed.

It can get mind-numbing here, as I said earlier, some of them follow this, but there's a clear pattern here in that there's enough documented information, it seems to me, that would answer a lot of these questions by just going back and looking at the materials we have in front of us.

In fact, it was the very weakness of Madison Guaranty of the institution that caused the Feds to promote the issuance of the preferred stock, and the memo dated on April 3rd to the file by the Fed's analyzing the issue approves of the business plan, so you then follow on with the inquiry or rather the letter going back approving at least the legal question. Then the further note coming in December saying, where's your plan.

It seems to me if you just take all of these things and look at them, it's pretty self-explanatory. It can be a bit confusing if you're looking at it for the first time, but there's a clear chronology here of what was going on in the Fed's interest aside from what the individuals in particular were promoting.

I don't know if that memo of John Mitchell, dated April 3, 1985, has been included in the record or not, Mr. Chairman?

The CHAIRMAN. It has been.

Senator DODD. Again, I think it is a very important memo. Coincidentally, it occurs on the very same day that makes the case the Fed's think put it on the right track. And the question became whether or not it could be done legally.

If that's all the case then of whether or not they filed, and they ultimately never filed. It seems to me here you have a pretty clear record of the Fed's responding to the situation as well.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I am sorry that we have to do some of this, but I think it is important because I want to set the record straight. I don't think that the media needs Senator D'Amato, or any Senator for that matter, defending them. But I think that their account of what Ms. Schaffer has testified to, and I'm speaking specifically of, I guess, today's AP wire, at 12:52-16 p.m., and I'm going to take the time to say:

Kraft says that early warning of Governor's office focused the Fed's warning against McDougal. It goes on to say, update, with Schaffer giving Governor's early warning about Fed's moving against savings and loan owned by Clinton's wife, and pick up second graph.

Nine days before the Federal Government moved against the failing savings and loan owned by Clinton's Whitewater partner, an Arkansas regulator warned the Governor's office that the crackdown was coming.

The Senate Whitewater Committee disclosed today, in a handwritten note to a top aide to the Governor, Beverly Bassett Schaffer wrote, "Because of Bill's relationship

with the lending institution's owner, Jim McDougal, we probably ought to talk about the situation."

Indeed, that's what the note said and that's what you testified to. Is that correct, Ms. Schaffer?

Ms. SCHAFFER. That's what it says.

The CHAIRMAN. It goes on, and I want to go over this with you.

Schaffer told the Committee she knew that McDougal and Clinton were friends, and she wanted to warn the Governor's office to have nothing further to do with McDougal.

Is that not what you said? That's correct, isn't it? OK.

Ms. SCHAFFER. I haven't been listening very carefully to what I have been saying.

The CHAIRMAN. Do you recall saying the reason you wrote this is that you wanted to warn the Governor's office, and you said you had nothing to do——

Let me just go on a little further and read this in context.

Schaffer said that she did not know that Clinton and McDougal were Whitewater business partners.

That's what you testified to?

Ms. SCHAFFER. That's correct.

The CHAIRMAN. And it says,

She testified that she wrote the note because, "I believe Jim McDougal abused his relationship with Bill Clinton."

Did you not say that?

Ms. SCHAFFER. I did.

The CHAIRMAN. It also says,

She said McDougal had tried previously to influence Clinton and that she wanted the Governor's office not to respond to further overtures from him.

Is that true?

Ms. SCHAFFER. Well, I mean, am I going to have to comment on the press account?

The CHAIRMAN. I just want to because——

Senator SARBANES. What Senator D'Amato is doing is reading you the press account.

The CHAIRMAN. Senator, I don't interrupt you. I don't need my questions characterized. Now, I'm asking you please, try to constrain yourself. I told her that I was reading this press account.

Ms. Schaffer, do you have a copy of this in front of you?

Ms. SCHAFFER. No.

The CHAIRMAN. Let me get you a copy, please, so that you can follow along. It's not a trick question, but I think it's not fair to characterize it and I'm not going to attempt to characterize. I want to ask you what you agree with and what you don't.

If you'll go down to the middle of the first page, do you see the middle? That sentence says, "She testified that she wrote the note because, 'I believe Jim McDougal abused his relationship with Bill Clinton.'" I can have the reporter read that back, but did you testify to that?

Ms. SCHAFFER. Yes.

The CHAIRMAN. You were concerned and you wanted to warn the Governor that McDougal would have trouble. I think you said, and I wrote a note here some time ago, "If he panicked," meaning

McDougal, "what he would do in terms of attempting to reach out to the Governor." Isn't that what you said? That's not there.

In your testimony, you talked about your concern that McDougal might panic, right? And might reach out to the Governor. And if that's not what you meant, I'd like to hear it.

Ms. SCHAFFER. Yes. I mean, that's good enough, I guess.

The CHAIRMAN. That's what you meant. I mean, you wrote this note and you talked about the Governor's relationship with Mr. McDougal, and you said because, and I'm reading the note now, "Because of Bill's relationship with McDougal, we probably ought to talk about it."

Now when we asked you what you meant, you wanted to give the Governor, to tell him, look, this guy has got some problems here with this bank. Is that correct?

Ms. SCHAFFER. I did not want Jim McDougal to abuse that relationship and try to draw somebody else into it. There was no place in it for anybody else. I did not want that to happen. I don't know that I testified that I knew that he had tried previously to influence Clinton. I don't believe I said anything like that.

Senator DODD. Ms. Schaffer, my problem was, earlier the paragraph reads, let me just give you the story, "Schaffer is giving Governor's office early warning about Fed's moving." Here's where I have my trouble, and this is why I raised the issue. The implication is that somehow maybe the Governor is then going to provide that information to Mr. McDougal when, in fact, Mr. McDougal already knew about it.

The CHAIRMAN. I wanted to put this in context.

Senator DODD. Our colleague from Missouri said this is like the catcher, it would be like the pitcher telling the batter what to throw. If you recall, that's the analogy he used.

Clearly the implication there is then by providing information to the Governor, the Governor then tells Mr. McDougal. That is the pitcher telling the batter what he's going to throw when, in fact, the batter already knew in June. That's my point.

The CHAIRMAN. Senator, I understand your point. I think it's a point well taken, and that's why we spent a little time doing it.

Senator DODD. But you understand my point? You say that, the pitcher telling the batter. The batter knew.

The CHAIRMAN. That certainly has not been the thrust of Mr. Chertoff's questions.

Senator DODD. I didn't say it was.

The CHAIRMAN. Some of our colleagues may examine from a different aspect.

Senator DODD. The story says, "early warning."

The CHAIRMAN. The article speaks for itself and we can go over this over and over again, but let me address this because this disturbed me. It didn't disturb me, but it raised a question.

I think Senator Murkowski and several others alluded there was a message that was taken in the Governor's office. Can I have that call slip? The message, one of the call messages.

The message says Governor from Jim McDougal and it has a date and it makes a reference to Beverly Bassett Schaffer for Securities Commissioner.

Now, you said you were not aware that Mr. McDougal had made a recommendation. Is that correct? You weren't aware that he had recommended you?

Ms. SCHAFFER. I wasn't ever told that he had a conversation with Bill Clinton or that he sent a note or whatever he did.

The CHAIRMAN. He may not have even had a direct conversation. It appears that there was a message taken down. But you were not aware that he called on your behalf?

Ms. SCHAFFER. No.

The CHAIRMAN. You testified to that. You went further and then said that you wouldn't want him to do that, and you were quite emphatic. I wouldn't want him to make a recommendation. Why did you say that?

Ms. SCHAFFER. Because of just my impressions of Jim McDougal.

The CHAIRMAN. Well, tell me.

Ms. SCHAFFER. It is broader than that probably, because when I sought this appointment, I specifically asked members of my law firm and others to stay out of the process because I was a little concerned about asking clients of the firm or clients to write letters or lobby on my behalf for the appointment, because I did not want to feel any obligation to those companies, or firms, or individuals in the event I did get the appointment. I made it very clear that I did not want that kind of effort made by my law firm on my behalf.

The CHAIRMAN. But you were quite emphatic when you said you wouldn't want McDougal in particular.

Ms. SCHAFFER. Well, I am saying, in broader terms, I mean, I don't want to limit it to just Jim McDougal. But I am saying that I absolutely, that was my big concern. I really did not want that effort made.

Specifically with regard to Jim McDougal, I didn't even know the man. I wouldn't want somebody talking to the Governor on my behalf that I didn't even know.

The CHAIRMAN. It had nothing to do with the fact that you knew he had been involved with a number of transactions that were improper? You did not think about that?

Ms. SCHAFFER. No, I didn't think about that.

Senator DODD. One point here. He could have been calling to oppose the nomination.

The CHAIRMAN. Of course, I don't think we want to engage in that speculation.

Senator DODD. All he says is Beverly Bassett for Securities Commissioner.

The CHAIRMAN. I am not even going through the note. It says Beverly Bassett for Securities. The point I am making is that Ms. Schaffer testified that she didn't even know that Jim McDougal had made this recommendation, and she was quite vehement. You said, "I wouldn't want his recommendation." I wanted to ascertain why you wouldn't want his recommendation.

You know of Mr. McDougal and you knew about his general reputation, didn't you? I mean, he had been around in government for a long time. Is that correct?

Ms. SCHAFFER. I knew some things about Mr. McDougal. About a fraction of what I know today.

The CHAIRMAN. But even then, you had a reason, you didn't want his recommendation, did you?

Ms. SCHAFFER. My impressions of Jim and Susan McDougal were formed in large part by the TV commercials, the ads that they ran. They were pretty silly.

The CHAIRMAN. Which ones were those?

Ms. SCHAFFER. Maple Creek Farms and there's another one.

The CHAIRMAN. Castle Grande?

Ms. SCHAFFER. I don't remember the Castle Grande.

The CHAIRMAN. They were quite extensively advertised. And you don't remember them?

Ms. SCHAFFER. Maple Creek Farms is the one that I remember.

The CHAIRMAN. And you are saying that it wasn't colored by the memorandum?

Ms. SCHAFFER. I would not have wanted a recommendation from any S&L operator at the time. I had a pretty good idea what S&L's were headed for.

The CHAIRMAN. Are you also telling me that in addition to generally not wanting any recommendation from outside sources, and specifically S&L operators, more than just McDougal, that it had nothing to do with any reservations that you may have had about him in terms of him not following the law?

Ms. SCHAFFER. That was not what was on my mind.

The CHAIRMAN. You really didn't remember at that time the memorandum in which you specifically mentioned the illegality of the transactions and actually warned that there might be criminal liability?

Ms. SCHAFFER. That memorandum has been grossly mischaracterized. If you take those few sentences, and that's all there is to it, then that may be what it says. It's 3 or 4 pages. It broadly looks at the entire issue. If you or I are a partner in a law firm, you give me the lowdown. You don't leave out the fact that there might be this ultimate penalty down the road. I mean, it's your responsibility to cover the whole ground.

The CHAIRMAN. With some specificity, you mentioned a number of properties that obviously the Federal people were not aware of, some of which failed to comply with Arkansas law. For example, you were aware that Campobello Island wasn't handled properly, right? That's one of the properties you mentioned.

Ms. SCHAFFER. I would have to read this memorandum.

The CHAIRMAN. Why don't you take a look at it. Can I see a copy of that memo? I think it's the last page, and I think it goes down to the last two paragraphs where you begin to talk—page 4. Do you see page 4, the last two paragraphs there. Here's what draws my attention, and again, this is the first time I've seen or heard of this. But when you start with that second paragraph,

Perhaps just as potentially devastating to the project is the possibility that upon discovering the failure of McDougal and Wade to make a filing determining that they should have complied with the Act and did not, HUD would seek an injunction against them to force them to stop selling lots or making any improvement whatsoever until they comply with the Act. In that case, it is likely that there would be a substantial delay in the progress of the development, and if no lots could be sold during that time there would be no income from sales to fund operations.

These risks should be weighed against the benefit of moving forward now on the initial 93 lots without first complying with the Act. The obvious benefit of moving forward is that the sale of those lots will provide critical capital needed immediately

to fund the start-up of the project and will hopefully generate more widespread interest in the project as well.

On the other hand, the more interest there is in the project, the higher profile it will have, thereby increasing the likelihood that HUD, unfortunately, will also be interested in the project. These, of course, are business risks which require business decisions.

If you go to your third page, you talk about, and you go down to the second-from-last paragraph, actually right in the middle,

Finally, S 1714 of the Act authorizes the Secretary of HUD and the Attorney General to seek and obtain a temporary or permanent injunction or restraining order without bond against any person who is engaged in or is about to engage in any acts or practices that would constitute a violation of the Act, namely, selling lots subject to the requirements of the Act but not in compliance with those requirements.

Although the likelihood of criminal sanctions being imposed against a developer appears to be relatively small, it has been done. Evidence that the developer willfully violated the Act would have to be fairly strong. The only concern I have on this point is the fact that McDougal did not make a filing with the OILSR—

Ms. SCHAFFER. Office of Interstate Land Sales Registration.

The CHAIRMAN. Is there an office in Arkansas?

Ms. SCHAFFER. No.

The CHAIRMAN. Is that Federal?

Ms. SCHAFFER. Yes.

The CHAIRMAN. [Continuing.]

—on Maple Creek Farms or on Gold Mine Springs, and to the best of my knowledge, there was no exemption available for those developments.

Then you mention Campobello Island Estates, so they are all clearly mentioned. You say,

The failure to comply with the Act in connection with one or two previous land development projects is some evidence that the failure once again to comply with the Act was willful and not just a negligent oversight.

So you see—

Ms. SCHAFFER. Can I say something?

The CHAIRMAN. Let me just pose this to you and then you can respond. Here is where I have difficulty. I understand when you say I wouldn't want McDougal recommending me. And, remember you wrote this memorandum just months before and it is about McDougal's actions.

So I think it does comport with your obvious—I'm characterizing what I detected—disdain for McDougal. Then you sent a note to the Governor, and I'm not questioning whether it should or should not—and you say, "Because of the friendship with McDougal." Then you testify that you didn't want the Governor to be pulled into this.

Now, Ms. Schaffer, I can't understand your conduct because you did review this when you were working for Governor Tucker's law firm. Yet when the question arose whether this bank could issue preferred stock, it didn't enter your mind that we were talking about Madison and McDougal, and those transactions that you previously reviewed and characterized as basically subject to criminal sanctions.

That troubles me. The First Lady calls, and you say, "Yes, we have been discussing this. It's been in the shop, and we'll get back to you on it." I'm wondering if the First Lady didn't call but someone else had called, what your response would have been, given the fact that you were aware of Mr. McDougal's shady practices in the

past? And you knew the bank was weak. I'm not suggesting that you didn't say certain conditions relating to the broker-dealer relationship had to be met, but that's where I have a problem. I just want to share that with you and you can respond, so please do.

Ms. SCHAFFER. This was a legal research memorandum. That's what it was. It was one of hundreds and hundreds I did. At the time, it was not outstanding in my mind. I believe that it says, I don't believe it draws a conclusion that any of these projects in fact violated any law. It suggests that they may, they could, they might, and here's what could happen if they do.

The other projects that are mentioned, I have no knowledge of the facts of those projects. I raised the question, a reasonable question to raise. I would have been negligent had it not been raised. Look at the other projects. Look at them.

I don't say in here this is in fact, I know for a fact, here are the facts about these projects, because I didn't know the facts about those projects. I wasn't privy to any conversation ever about these projects. So this is a legal memorandum.

Now it doesn't arrive at the conclusion that, in fact, that occurred. And you're asking me, you're telling me——

The CHAIRMAN. He didn't register, did he?

Ms. SCHAFFER. Yes, he did. He most certainly did.

The CHAIRMAN. He was registered at that time?

Ms. SCHAFFER. They corrected it. My understanding is, I was not involved in it, but yes.

After this memorandum, I don't know what happened to this memorandum. I have no idea. I did what I was supposed to do. I gave it to Jim Guy Tucker. I don't know what they did with it, but I do know that they did make a filing with the HUD office, with the Office of Interstate Land Sales Registration, and corrected the problem I brought to their attention.

The CHAIRMAN. When did you find that out, Ms. Schaffer?

Ms. SCHAFFER. I don't know. I've found so much out in the last 4 years, I don't remember when that fact emerged.

The CHAIRMAN. But at the time that you wrote this, you raised this as a very real problem.

Ms. SCHAFFER. They should comply with the law.

The CHAIRMAN. But they weren't at that point?

Ms. SCHAFFER. But they should.

The CHAIRMAN. That is true.

Senator Sarbanes.

Senator SARBANES. Ms. Schaffer, I must say, as we have probed each of these issues, it comes through that you tried to handle yourself in a very proper and professional manner. You made the point here today that you didn't want anyone, with the possible exception I guess of your brother, who went to the Governor two or three times, you have a good brother, he thinks a lot of you, to try to say that you ought to be the Securities Commissioner. But you didn't want anyone sort of recommending you and particularly people in the industry which you would be involved in overseeing. Is that correct?

Ms. SCHAFFER. That's correct.

Senator SARBANES. That is what I understood you to say. Is that right?

Ms. SCHAFFER. That's correct.

Senator SARBANES. As Commissioner, I'm interested in this effort this morning to take an approval given by you and your department on the general legal question that an S&L could, under the Arkansas business law, issue preferred stock and try to turn it into an approval of a specific Madison proposal. Now a specific Madison proposal was never approved by you or your department, was it?

Ms. SCHAFFER. No.

Senator SARBANES. What you approved and authorized was the concept that preferred stock could be issued by an S&L under the Arkansas Business Law, is that correct?

Ms. SCHAFFER. That is what I intended, that is what I thought I was approving.

Senator SARBANES. Well, I think that is what you did. I don't think that your abilities, capacities, and professionalism as a lawyer ought to be cast in doubt here, because I think you acted as a good lawyer. Are you practicing now? Are you still in practice?

Ms. SCHAFFER. I was. I am on leave of absence because I really have to deal with this.

Senator SARBANES. I didn't know that. I'm sorry to hear that. I think what's being put to you is very difficult and the implications that are being made about you I think are extremely unfair. You have gotten a difficult press. I gather you were, as Commissioner, harassed down there. Is that correct?

Ms. SCHAFFER. I think most of the press has been pretty fair to me, and pretty professional, and used some manners and just did their job. But I had a few upsetting events that sort of overshadowed the good.

But, yes, it concerns me that it's gone past, or seems to have gone past the effort to gather the facts, if there ever was a true effort to gather the facts in any of this, to a real personal smear, and it's just really unfortunate that that's what this is about in a lot of ways. I'm not suggesting that the vast majority of the press had anything to do with that kind of thing.

Senator SARBANES. How long were you the Securities Commissioner?

Ms. SCHAFFER. Six years.

Senator SARBANES. Were you ever subjected to any improper pressures from the Governor as Commissioner?

Ms. SCHAFFER. No.

Senator SARBANES. Did you feel you were able to do your job as the public interest required and the law called for?

Ms. SCHAFFER. Yes.

Senator SARBANES. What was your perception, Mr. Handley, of how the Department operated during that period when Ms. Schaffer was the Commissioner? Any improper influences brought to bear on it that you discerned?

Mr. HANDLEY. I was never asked to do anything illegal or improper by anybody. I always got the chance to say what I thought and what I believed and that's what I did.

Senator SARBANES. Was it your perception the department's decisions were being guided by the public interest?

Mr. HANDLEY. Yes.

Senator SARBANES. I have no questions. I'm finished, Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Schaffer, so there's no lack of clarity about the point, I am getting into this July 2, 1986 note to Sam Bratton, CCBW 884, 885-887. I believe your testimony was that on other occasions, or on occasions where there was a bank closing or savings and loan closing, you would contact the Governor's office to give the Governor some notes of the closing, right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. That's because the closing affects depositors, is that right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. But in this case, in July 1986, there was not going to be a closing of Madison, correct?

Ms. SCHAFFER. Well, I still believed that there would be. I hoped that there would be. That's what I thought should have been done.

Mr. CHERTOFF. When did you write your letter to the Federal Home Loan Bank Board suggesting a closing?

Ms. SCHAFFER. When we had the final proof of insolvency in 1987.

Mr. CHERTOFF. When in 1987?

Ms. SCHAFFER. December.

Mr. CHERTOFF. So in December 1987, you first requested a closing due to insolvency, right?

Ms. SCHAFFER. Let me clarify that. I don't believe when I talked to Sam Bratton that I knew what the plan was for the Dallas meeting. So in my mind, it was still a distinct possibility that based on the unsafeness and unsoundness of the institution, that it might well be closed. And so I don't know that I knew what the plan was. That would have clearly taken the savings and loan away from the McDougals. The plan, as it evolved, did the same thing, and left the institution under new management. Even before new management was there, the McDougals were gone. There was hardly an immediate crisis and need immediately to close the institution.

Mr. CHERTOFF. The point I'm making, Ms. Schaffer, and it's confirmed by the letter of June 19th. The letter of June 19th merely indicates there's going to be a board of directors' meeting. It doesn't say anything about an imminent closing of the bank that's going to cause a crisis for depositors.

Ms. SCHAFFER. We weren't going to tell Jim McDougal in advance that we were going to close the savings and loan.

Mr. CHERTOFF. Let me finish. In fact, you yourself didn't recommend, I think you have taken the position publicly that you couldn't have recommended or taken steps to close the savings and loan until you had a certification of insolvency.

Ms. SCHAFFER. On the grounds of insolvency. But there were other grounds that were available, the grounds of substantial dissipation of assets or unsafe and unsound conditions.

Mr. CHERTOFF. So in July 1986, which is 18 months before you wrote the letter to the Federal Home Loan Bank Board, what was on the table was a meeting of the board of directors, not an imminent action that would affect depositors, right?

Ms. SCHAFFER. I disagree.

Mr. CHERTOFF. It was an action that would, however, affect Mr. McDougal, right?

Ms. SCHAFFER. I disagree.

Mr. CHERTOFF. The removal of Mr. McDougal in the meeting of July 11th was not something that was going to affect McDougal?

Ms. SCHAFFER. Of course it would. But it also affected depositors. At the point in time when I had the conversation, it was still my belief and my hope that it would just be closed. Closed. I believe that's what my note says. I think they are going to have to be closed. The fact that they came up with a plan that would not involve a depositor payout that accomplished the same thing was fine with me.

Mr. CHERTOFF. It is quite clear, and let's make sure there is no dispute about it, that of course the board of directors of the savings and loan knew that there was going to be a meeting with the Federal Home Loan Bank Board because they were required to attend, right?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. The question here is, the notification to the Governor through Mr. Bratton accompanied by the letter that sets forth the particular items that are problem items, including Castle Sewer and Water and IDC, or Industrial Development Company of Arkansas. Do you know whether Mr. Bratton communicated what you had asked him to convey to the Governor?

Ms. SCHAFFER. I didn't ask him to do anything with the information, Mr. Chertoff. I don't know what he did with the information. I didn't ask him to do anything with it.

Mr. CHERTOFF. You asked to talk to him?

Ms. SCHAFFER. I told him he needed to know that. I don't know what he did with it.

Mr. CHERTOFF. Didn't you say that we probably ought to talk about it?

Ms. SCHAFFER. Sam and I.

Mr. CHERTOFF. Did you talk to him about it?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. What did you tell him?

Ms. SCHAFFER. I've testified to that, I think for an hour or so.

Mr. CHERTOFF. We'll check the record.

In your discussion with Mr. Bratton, did he tell you he was going to tell the Governor?

Ms. SCHAFFER. He did not. He said, I agree with you.

Mr. CHERTOFF. About what?

Ms. SCHAFFER. With what I said.

Mr. CHERTOFF. What specifically did he agree with you about?

Ms. SCHAFFER. He agreed with what I told him.

Mr. CHERTOFF. That McDougal was in trouble?

Ms. SCHAFFER. No, he agreed with my recommendation that the Governor's office should have nothing to do with this issue in any way. It should not involve itself in any way with what the Department was planning to do, was going to do, no matter who liked it, what the fallout was, whatever. He agreed that there was no role for the Governor's office.

Mr. CHERTOFF. So you essentially were moving preemptively to make sure that if McDougal reached the Governor, that Sam Bratton was aware and would recommend, no, have nothing to do with McDougal, right?

Ms. SCHAFFER. Basically.

Mr. CHERTOFF. I want to read to you from Mr. Bratton's deposition on page 161.

The CHAIRMAN. Let's make sure that she gets that first. Why don't we put it on the Elmo before we start reading it. This is the only one? Let's wait a moment and make some copies of this?

Mr. CHERTOFF. If we can resume again, I want to direct your attention, you can read along with me starting at page 161 at line 16, and this is from Mr. Bratton's deposition.

Question: After discussing Madison issues with Beverly Bassett Schaffer, did you then subsequently discuss your discussions with Beverly Bassett Schaffer with the Governor?

Answer: On occasions I would if—probably not every time I had a conversation with Beverly Bassett Schaffer in which Madison was mentioned would I have a follow-up conversation or memorandum to the Governor. There would have been occasions when I would either give him an oral report or perhaps send him a short memo about it, but not on every occurrence where she and I had a conversation in which Madison was mentioned.

Question: Do you recall any specific occasions?

Answer: I think a specific occasion, I think I probably wrote him a memorandum, either shortly before or shortly after or possibly both, the action of the FSLIC, enforcing McDougal out at Madison, I think I probably wrote him a memo about probably one, in advance that it was likely to happen, and perhaps a subsequent one that it had happened.

Question: Did you have any discussions about those memos with the Governor?

Answer: I don't recall whether I did. I may well have.

Let me ask you with respect to this particular note we're talking about, I understand that on other occasions, you communicated with the Governor's office about actions that you were going to be taking with respect to various savings and loan, is that correct?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. Were there any other occasions in which, when you made that communication with Mr. Bratton, you said it was because of Bill's relationship with the guy who was operating the savings and loan?

Ms. SCHAFFER. No, I handled them all the same way.

Mr. CHERTOFF. The only contact you had with Mr. Bratton concerning action on a savings and loan in which you put in the note that you were having the contact because of Bill's relationship with somebody was on this particular Madison Guaranty closing, right, or Madison Guaranty action?

Ms. SCHAFFER. I'm sorry, I don't understand the question.

Mr. CHERTOFF. I'll read it again.

The phrase, "Because of Bill's relationship with McDougal, we probably ought to talk about it." Were there any other savings and loan where you told or indicated to Mr. Bratton that you need to talk to him about action on this savings and loan because of Bill's relationship with the owner of the savings and loan?

Ms. SCHAFFER. The other two savings and loans from 1985 were handled in the same way, advance notice, what was likely to happen, that's correct. They were handled exactly like Madison, and Jim McDougal didn't own either one of those.

Mr. CHERTOFF. But there's a difference.

Ms. SCHAFFER. There's not a difference.

Mr. CHERTOFF. In those other two instances, did you tell Sam that you needed to get this information to the Governor because of the Governor's relationship with the owner of the savings and loan?

Ms. SCHAFFER. Jim McDougal didn't own the other two savings and loans.

Mr. CHERTOFF. Whoever the owner was on those other occasions, the reason you communicated with Mr. Bratton didn't have anything to do with the relationship—let me finish—between the Governor and the owner.

In this case, when you state a reason for why we ought to talk about it, you don't say because of the depositors, you don't say because of the shareholders, you don't say because of the confidence of the citizens of the State of Arkansas. You say, and these are your words, these are not my words, you say, "Because of Bill's relationship with McDougal, we probably ought to talk about it." My question to you is, did you ever make a similar type of comment with respect to any other savings and loan involving some other owner of the savings and loan besides McDougal?

Ms. SCHAFFER. I don't know. I might have on Guaranty Savings & Loan at Harrison.

Mr. CHERTOFF. Was the owner of Guaranty Savings & Loan another friend of the Governor's?

Ms. SCHAFFER. A lot of people in Arkansas were, and I have no idea. I don't know whether they were campaign contributors, they might well have been. I do know I believe that they did, the owners of that savings and loan, in 1985, were angry and I don't know whether they contacted the Governor's office. I wouldn't be surprised if they had.

Mr. CHERTOFF. You also knew that Mr. McDougal had a lot of influence in appointing people to posts involving savings and loan regulations.

Ms. SCHAFFER. No, I have learned that since 1985.

Mr. CHERTOFF. So you didn't know in 1985 that it was Mr. McDougal who appointed Latham or who recommended Latham and Kendall to the State Savings and Loan Board?

Ms. SCHAFFER. Charles may have known that. I don't know exactly how that information came. It is obvious to me that if John Latham was the appointee, that Jim McDougal might have had something to do with it. But you asked me if I knew that Jim McDougal had a lot of influence over appointments to the State Savings & Loan Board. I don't know that for a fact. You'll have to ask him or Bill Clinton.

Mr. CHERTOFF. We have a document, but that's what you've said, is an interesting point. You say that you surmise at the very least, from Mr. Latham, it was kind of obvious that McDougal has some influence.

Ms. SCHAFFER. I can tell you that nobody else wanted the appointment. That may be the reason that he got it is because nobody wanted it.

Mr. CHERTOFF. Now, we get back to the question of your state of mind and your knowledge about Mr. McDougal going into this thing in 1985. Again, we've come back to this memo that the Chairman asked you about regarding Campobello Island Estates. Are

you telling us now that the Campobello Island Estates sales were subsequently properly registered?

Ms. SCHAFFER. That's my understanding.

Mr. CHERTOFF. Where did you get that? Did someone tell you?

Ms. SCHAFFER. I have no idea, Mr. Chertoff. I can't remember.

Mr. CHERTOFF. But what is clear in your memo, and we talked about the question of whether you knew the facts, when you were an associate, I assume they taught you what they teach every other associate, that when you are assuming something you should state explicitly in a memo, I am assuming the following, so that you identify it.

Ms. SCHAFFER. It says, "it is my understanding." That's close enough to, "I assume."

Mr. CHERTOFF. When I look at the next-to-last paragraph on page 3, and I'm sure you have the document in front of you, it says, in the third line, "The only concern I have on this point is the fact that McDougal did not make a filing with the OILSR on Maple Creek Farms or on Gold Mine Springs, and to the best of my knowledge, there was no exemption available for those developments."

You were giving this in your memo to a partner, and the top of the memo indicates, "Send copy to McDougal." Did you understand this was going to go to the client?

Ms. SCHAFFER. What?

Mr. CHERTOFF. Top of the memo, very first page, the handwriting says, "Send copy to McDougal."

Ms. SCHAFFER. That's not my handwriting.

Mr. CHERTOFF. No, I am saying did you know this was going to the client?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Mr. Tucker didn't tell you that?

Ms. SCHAFFER. That's correct.

Mr. CHERTOFF. You indicated to us that in 1985, when you were confronted with a request relating to Madison, you don't remember that you had done work on Madison issues the year before. Is that right?

Ms. SCHAFFER. It didn't occur to me. That wasn't what was on my mind in 1985? Is that the question?

Mr. CHERTOFF. Yes, about 8 months or a year after you had written the memo, when the Madison matter, a year after you'd written the memo.

Senator SARBANES. When in 1985 are we referring to?

Mr. CHERTOFF. April 1985.

Senator SARBANES. And this memo was?

Mr. CHERTOFF. March 1984.

Senator SARBANES. Thirteen months later.

Ms. SCHAFFER. If somebody had asked me about it, I might have.

Mr. CHERTOFF. If somebody had asked you about Madison?

Ms. SCHAFFER. No. About whether, if I had been the issue in 1985 instead of Madison.

Mr. CHERTOFF. You were shown a memo earlier since the break. It is an April 3, 1985 memo from John Mitchell. "Subject, Madison Guaranty Savings & Loan Association." Had you seen this memo before?

Ms. SCHAFFER. Have I seen it before?

Mr. CHERTOFF. Have you seen it before?

Ms. SCHAFFER. I had a microfilm copy of a copy. But I couldn't read it.

Mr. CHERTOFF. Did you get it at the time?

Ms. SCHAFFER. I'm sure I did.

Mr. CHERTOFF. When you looked at this memo at the time, did you make note of the fact that two of the projects that were listed here were projects that were the subject of your memo a year before where there was a problem with the land registration?

Ms. SCHAFFER. No.

Mr. CHERTOFF. When you went to the Federal Home Loan Bank Board meeting, you went there on July 11, 1986, right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. Who represented Madison, what firm?

Ms. SCHAFFER. I believe John Selig and Breck Speed.

Mr. CHERTOFF. What firm were they from?

Ms. SCHAFFER. The Mitchell Law Firm.

Mr. CHERTOFF. Was that the firm you'd been at in 1984?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. When they came into the room representing Mr. McDougal or representing, I'm sorry, Madison Savings & Loan, did it ring a bell with you that, you know, I worked on something to do with Madison Savings & Loan?

Ms. SCHAFFER. I wasn't thinking about that. No, Mr. Chertoff, that was not what was on my mind.

The CHAIRMAN. I know Mr. Chertoff wants to go into this matter further, and he's going to get back to it, but I think if he does it's going to go well over the time and we are up to 14 minutes. So I am going to go to Senator Sarbanes, then we'll come back.

Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you.

Since we are back to this memo that you sent on July 2, 1986, let's review the various reasons why you sent that memo. As I understand it, one reason was because you would keep the Governor's office apprised whenever there was activity or action that could affect the savings and loans, that might have an impact on the depositors, correct?

Ms. SCHAFFER. Correct.

Mr. BEN-VENISTE. In this case, you had heard that the press was making inquiries about the upcoming meeting of the Bank Board?

Ms. SCHAFFER. The inquiries were general in nature. Is Madison fixing to be closed? Is Madison going down? We heard they are in trouble? Like that.

Mr. BEN-VENISTE. In addition to the general proposition that you would keep the Governor's office apprised, as you did, with respect to the closings a year before of two other institutions, completely unrelated to, as far as you knew, friends or acquaintances or associates of the Governor, now you had to deal with the rumors that were circulating about Madison and possible regulatory action, if that right?

Ms. SCHAFFER. Right.

Mr. BEN-VENISTE. So that was reason number two.

Reason number three was that you thought it prudent and useful to let Mr. Bratton know that action would likely be taken affecting Mr. McDougal personally and that he ought to know that information in case Mr. McDougal had sought to make a direct approach to the Governor's office, correct?

Ms. SCHAFFER. Yes. Although I don't think, I told him what action might be taken. I think the point I intended to convey was that whatever action was taken, the Savings and Loan would be either closed, or something to that effect. I mean, basically you were right. I just want to make it clear that what was on my mind was not Jim McDougal is, you know, being personally affected.

Mr. BEN-VENISTE. So there were three separate and pretty much independent reasons prompting your writing this note, and you discussed it with Mr. Bratton.

Mr. Bratton, in his sworn testimony, has testified fully about your conversations with him, both in connection with the other institutions and with respect to Madison Guaranty. The testimony is completely consistent with yours, in my view, about what had occurred back then 11 years ago.

So now the question arises, as a result of writing this note to Mr. Bratton, and enclosing a copy of the Federal Home Loan Bank Board letter, that the Madison Board of Directors had already received, can you point to any bad thing that happened? Did something bad happen as a result of you writing that memo?

Ms. SCHAFFER. To Sam?

Mr. BEN-VENISTE. Other than the bad thing that's happened to you by being mired down, to the extent of giving up your partnership on a temporary basis and focus on all this. I mean, this most importantly because we tend to lose sight of the focus here and what it is we are talking about.

Here is a memo that is sent to Mr. Bratton. Can anybody here point to something untoward, irregular, or improper that resulted or that flowed from this communication?

Ms. SCHAFFER. No.

Mr. BEN-VENISTE. When we go back to the question of what you had done 13 months before when you were an associate in a law firm looking at issues regarding regulatory requirements with some other agency, it is the job of lawyers to point out deficiencies of that nature so that they can be corrected.

Ms. SCHAFFER. That's what I thought I was doing.

Mr. BEN-VENISTE. This is not rocket science. This is what you were doing? You were pointing to thing that were out of order that could be placed in order, and that is frequently what happens in a variety of regulations to which businesses are subjected. Sometimes lawyers can prove quite helpful in pointing a client or associate of a client in a direction to take remedial action as appropriate. Is that correct?

Ms. SCHAFFER. The effort here was to make sure compliance was made. It needed to be made and had not been made. Then, you need to know the consequences of that and correct it.

Mr. BEN-VENISTE. So you, in terms of the assignment you were given, identified the areas where corrective action could be taken. Did you have any reason to believe it wasn't taken?

Ms. SCHAFFER. No, I don't. I have no idea. I wasn't involved in anything after that.

Mr. BEN-VENISTE. A research project came across your desk. You identified the issues. You focused on it. You wrote a memo, and that was it?

Ms. SCHAFFER. That was it.

Senator SARBANES. You didn't know at the time whether these failures to file were willful or negligent?

Ms. SCHAFFER. No, I did not.

Senator SARBANES. You said that specifically in the memo, as I read it.

Ms. SCHAFFER. I think it repeatedly says also, "to the best of my knowledge," "to the best of my knowledge," which was quite limited. Maybe I should have said: Based on my limited amount of information that I have been told, but "to the best of my knowledge" means that. It doesn't mean I've drawn a factual conclusion and that it is irrefutable. I don't know. It is an abundance of caution, it looks to me like, and everybody else here has gotten to read this several times before today. I have not.

Senator SARBANES. It seems to me you were just laying out the options, the possible implications, but I note that you say, you raise a point about whether it was negligent oversight or willful. So you didn't know for a fact whether it was one or the other, I take it?

Ms. SCHAFFER. No.

The CHAIRMAN. Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Ms. Schaffer, let me go back to clear up a couple of things with respect to the approval of the preferred stock issuance.

We have discussed, or you have seen I believe, the memoranda from Jim McDougal which, for background purposes, indicated that he wanted to sell preferred stock immediately. We have the memorandum saying, "I want this preferred stock matter cleared up immediately as I need to go to Washington to sell stock," and the business plan which we have, is another memo.

Senator SARBANES. What are you referring to?

Senator BOND. Excuse me. Has Ms. Schaffer seen 99003746? That is a Letter to File from John Mitchell and S-KR03131?

The CHAIRMAN. You do have the April 3rd letter there?

Ms. SCHAFFER. Yes.

The CHAIRMAN. It says, "To File from John Mitchell"?

Ms. SCHAFFER. Yes.

Senator BOND. Have you seen the memorandum dated April 18th to John Latham from Jim McDougal?

Ms. SCHAFFER. I don't think so.

Senator BOND. We'll put it up. It is very brief. I offer that for background to say that the documents have indicated that they want this matter to go forward. My question to you is—

The CHAIRMAN. Senator, can you see that on the Elmo?

It is a very short one page: "I want this preferred stock matter cleared up"—what is that?

Senator BOND. "... cleared up immediately as I need to go to Washington to sell stock."

Ms. SCHAFFER. "Washington"? "Washington"?

Senator BOND. Who knows? I'm not going to—

The CHAIRMAN. This is a memo from, obviously——

Senator BOND. McDougal to John Latham.

The CHAIRMAN. Have you seen this before?

Ms. SCHAFFER. No.

Senator BOND. Thank you. That's all I needed to know.

But I would like to ask now, after the May 14th approval letter, you had done what was requested of your department? Correct?

Ms. SCHAFFER. We had responded to their letter.

Senator BOND. The conditions you placed were conditions upon the activities of the broker-dealer, the service company's broker-dealer activities. Did you put any conditions at that time on Mr. McDougal or limit his ability to sell stock, the preferred stock?

Ms. SCHAFFER. Not in the May 14th letter. That was, I believe, in a July letter to Rick Massey, the broker-dealer application, and discussions about that I think followed this May 14th letter sometime during June, July, or August.

Senator BOND. That's the point. I think there has been confusion because there are restrictions on the broker-dealer matter, and I want to set that aside and just focus on the preferred stock.

Once you issued the approval on May 14th, then it was up to Mr. McDougal, if he could find a purchaser who thought he was going to sell \$600,000, then he would have to come back with another filing specifically, but he did not do that?

Ms. SCHAFFER. He didn't.

Senator BOND. So in terms of that process, you granted the approval that was requested, and the reason nothing further happened was not any failure to act on your part with respect to the preferred stock?

Ms. SCHAFFER. Right. They never submitted the proposal that would have been required to be submitted in advance before they could offer or sell the stock.

Senator BOND. Thank you. I think that was a little bit confused because there were questions asked about the broker-dealer and what went on afterwards, and what limitations were placed on the broker-dealer.

Now did the Madison Service Agency acquire a broker-dealer prior to getting approval from you?

Ms. SCHAFFER. It did what a lot of other companies did at the time, and some other S&L's. They acquired a dormant, inactive broker-dealer shell that wasn't licensed to operate.

Senator BOND. Then they came to you, and that is what began the process of your discussions of an examination of and/or restriction of the operation of the broker-dealer?

Ms. SCHAFFER. Yes, that is good enough, I guess.

Senator BOND. Thank you.

Let me go back to the July 2, 1986, memorandum to Sam——

Ms. SCHAFFER. "Bratton."

Senator BOND. Sam Bratton. At the time you sent the memo, did you have a meeting with Mr. Bratton or a telephone conversation in respect to that memorandum?

Ms. SCHAFFER. I didn't have a meeting with him. I had a telephone conversation, but I don't know what day. That was the 2nd of July. I couldn't tell you.

Senator BOND. But you did have a conversation with him that referenced matters in that memorandum?

Ms. SCHAFFER. Yes.

Senator BOND. Do you recall what that conversation was?

Ms. SCHAFFER. Well, yes. I've testified I think today fairly extensively about the conversation. I can go through it again, if you like.

Senator BOND. Again I apologize. I had to speak to the Mayors today and I was not present for it. If it is fully in the record, I will come back and not take up more of your time going through it.

At the time you had that conversation, you had been in discussions with the Federal Home Loan Bank Board about Madison Guaranty and other troubled savings and loans?

Ms. SCHAFFER. Yes.

Senator BOND. Did they give you continual status reports and updates on what they planned to do?

Ms. SCHAFFER. I wouldn't call it "continual." Periodic.

Senator BOND. Did they tell you in advance of July 11th what steps they were going to take at the July 11th meeting?

Ms. SCHAFFER. They did at some point. We discussed it. They asked our recommendation about that, and I suppose this is where—this really aggravates me—I suppose I could have said, well, we don't want you to do that because, after all, Jim McDougal is a friend of Bill Clinton's; but what I did instead was say, absolutely, you know, let's do it.

So I think it is unfair—you know, I had an opportunity there to do the wrong thing and I didn't. But in those conversations, we did discuss what would happen or the mechanism if it were to be closed and what action would be taken. I do not know when that jelled. I mean, I do not know when it was settled and resolved that that is what would be done.

Charles I believe had some of those conversations, so he might know better than I; but we did know before we went to Dallas.

Senator BOND. All right.

Then the letter which was attached to your July 2nd handwritten note which went to the Board of Directors of Madison Guaranty was, as I believe you stated, kept confidential. This was to be known only to the Board Members and the people involved that these restrictions were being placed upon Madison Guaranty? You included a copy of the Federal Home Loan Bank Board letter of June 19th in the note to Mr. Bratton?

Ms. SCHAFFER. I believe that the State—we are all State. I mean, we are an agency of the State. So I will not make the distinction between the Securities Department and the Governor's office in terms of the State's right to look at that document. That is too narrow for me.

Senator BOND. I think that point was raised previously, and I think there is a very good reason for that. I stated why in my State we did not do that. I think some of my colleagues may have drawn the wrong inference. I think there are problems involved with that.

I guess the final question was that you had with the transmittal of this letter to Mr. Bratton, the point I believe you made earlier was that you felt that the Governor needed to know about the action to be taken in Dallas by the Federal Home Loan Bank Board?

Ms. SCHAFFER. I think I have said this repeatedly. I didn't say that Sam Bratton should tell Bill Clinton. Sam was my liaison. Sam was the person I wanted to know. Sam, do whatever you want to with it after that. I didn't have anything to do with it anymore and didn't want to. But that was my purpose. I wanted the information in describing—I was asked about the relationship, Bill Clinton's relationship, what does that mean? Well, I've said that I believe that Jim McDougal abused his relationship with Bill Clinton. That's not something I wanted to see occur again.

Senator BOND. But the reason you talked to a liaison with the Governor's office is because that is information the Governor's office needs to have? That is why they have liaisons. Right?

Ms. SCHAFFER. Well——

Senator BOND. OK, well——

Ms. SCHAFFER. That's right. I think it is a fair conversation to have. If something is done with the information that is inappropriate, then I think that is a different matter altogether.

Senator BOND. All right. Thank you, Mr. Chairman.

The CHAIRMAN. I have to ask a question. You said, and I asked Mr. Chertoff to write it down, "I didn't want Mr. McDougal to abuse his relationship with the Governor. It's something that happened. I didn't want it to happen again." What didn't you want to happen again?

Ms. SCHAFFER. I think you're just over-reacting to that——

The CHAIRMAN. I am not over-reacting.

Ms. SCHAFFER. I should choose my words more carefully.

The CHAIRMAN. You said, "I believe he abused his relationship with the Governor." Is that what you said?

Ms. SCHAFFER. I think he threw Bill Clinton's name around every chance he got.

The CHAIRMAN. You knew it back then?

Ms. SCHAFFER. Well, he did it. He did it everywhere he went.

The CHAIRMAN. You were aware of it, then?

Ms. SCHAFFER. Of course I was aware of it.

The CHAIRMAN. As a matter of fact, you knew that he was Bill Clinton's top assistant at one point, wasn't he?

Ms. SCHAFFER. I don't think I really knew that. His top assistant? I don't think so.

The CHAIRMAN. You knew he worked for the Governor?

Ms. SCHAFFER. At some point, at some time he did in some capacity, as a liaison, I think. I wasn't paying any attention to Jim McDougal in 1978. I was in law school.

The CHAIRMAN. But you said you never wanted him to do it again?

Ms. SCHAFFER. Then I withdraw the comment. As I say, I am going to have to choose my words more carefully.

The CHAIRMAN. Ms. Schaffer, this is not the first time. Starting from the beginning, the record indicates you wrote this note, and the note says quite clearly—and I think Mr. Chertoff raised it—did you ever suggest, because of someone's relationship with the other failed banks, "Because of Bill's relationship with McDougal, we probably ought to talk about it."

Ms. SCHAFFER. I've said all I can say about that.

The CHAIRMAN. We have several more minutes.

Mr. Chertoff, let me say I have gone to 15 minutes because we have less than four Members, and this way we will have a better flow. At 15 minutes we will conclude, and then we will go to the other side.

Mr. CHERTOFF. Thank you, Mr. Chairman.

This Federal Home Loan Bank Board meeting on July 11th, that was actually sparked by an examination at the savings and loan that took place starting around February 28th; right?

Ms. SCHAFFER. I don't know.

Mr. CHERTOFF. Sometime in the Spring you knew there had been an examination?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. You knew there had been discovery, and a lot of I guess what we could call financial shenanigans, including using straw men to purchase property?

Ms. SCHAFFER. I don't know what I knew at that point in terms of the details. Charles brought it to my attention, but, no, I am not going to say that I knew in detail.

Mr. CHERTOFF. Do you know what a "straw man" is?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. Just to lay it out on the record, your understanding of a straw man is somebody who—and this could be a straw "woman"—is used as really a fictitious purchaser, someone who really is not buying the property for themselves but they are lending their name so as to conceal the real identity of the person who actually has the real ownership. Is that a fair description?

Ms. SCHAFFER. Yes, I guess.

Mr. CHERTOFF. I want to give you a document which is a record of this Board of Directors meeting at the Federal Home Loan Bank on July 11th, which I am going to put before you.

The CHAIRMAN. Does Ms. Schaffer have a copy of that?

Ms. SCHAFFER. Of course I don't have a copy of it.

The CHAIRMAN. We are going to get it to you. Don't try to read it off the Elmo.

Mr. CHERTOFF. Have you ever seen this before?

Ms. SCHAFFER. No.

Mr. CHERTOFF. It is produced by the Federal Home Loan Bank Board. It lists a number of people who attended the meeting: Rolf Coburn, Beverly Bassett, Charles Handley, Bob Young, Larry Staten, Karen Bruton, and a number of other people, including John Selig, who was from your old law firm; right?

Ms. SCHAFFER. That's what it says.

Mr. CHERTOFF. I want to see if I can help you. For the record I will identify it. This is a typed version from notes or minutes that were kept by one of the Federal Home Loan Bank personnel of what occurred at the meeting.

The CHAIRMAN. This is the Federal Home Loan Bank Board meeting down in Texas concerning Madison Guaranty?

Mr. CHERTOFF. That's right.

The CHAIRMAN. This is the meeting that Ms. Schaffer indicated in the note was going to take place on July 11th?

Mr. CHERTOFF. That's right.

By the way, we have talked about the Federal regulators and what they were doing and what they thought about Madison. Just

to be clear, the Federal Home Loan Bank Board that you dealt with was located in Dallas? Right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. You were in Arkansas and they were in Dallas?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. I want to have you follow this with me and see if you can shed some light on your recollection of these conversations. Let me ask first, do you need a break?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Are you ready to go forward?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. OK. On the second page under the description for "Faulk," Item No. 6, it says, "Misuse of position and usurpation of corporate opportunities. The Association has been making sales to people without financial wherewithal that are characterized as 'straws' as to generate business." Do you remember the discussion about straws?

Ms. SCHAFFER. I don't remember the specific discussion 10 years ago or so.

Mr. CHERTOFF. They talk about financial false and inaccurate information having been given to the examiners. Do you remember that discussion?

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. What about that?

Ms. SCHAFFER. I just remember that the examiners—I guess not in much detail. I remember the examiners being angry and feeling like at the on-site examination that they weren't given all the documents that they needed in a timely fashion to complete the audit and to pursue the things they were looking for.

The CHAIRMAN. I am going to ask Counsel to suspend because we are over.

Senator Sarbanes.

Mr. COLE. Mr. Handley, if I could ask you about the issue of regulation of Madison Guaranty, after the meeting in July 1986, that we have been discussing, do you recall whether a Cease and Desist Order was entered against Madison Guaranty by Federal regulators shortly after that meeting?

Mr. HANDLEY. Yes, sir.

Mr. COLE. I am not going to put the document in the record, but I have a copy of it here, a 30-page order laying out the manner in which the institution would be operated. Is that consistent with your recollection of what occurred?

Mr. HANDLEY. Effectively that Cease and Desist Order placed the Federal Home Loan Bank in control of the management decisions of the Savings and Loan Association. They controlled the Savings and Loan with this.

Mr. COLE. So from the perspective of your department, was it necessary for you to take any further action at that time in view of the actions that had been taken by the Federal regulators?

Mr. HANDLEY. We felt that that agreement effectively got the McDougals out, and the Federal Home Loan Bank put the management in that they wanted and controlled the management.

Mr. COLE. Was there anything further in your department that the State of Arkansas could have done at that point to take further action against Madison Guaranty?

Mr. HANDLEY. We could have. We could have closed them down. As Beverly testified, we could have filed in State court for a receiver, but I think that would have been disastrous to the insurance system in the State of Arkansas and the insurance system in the whole United States if FSLIC wasn't going to participate in that receivership.

Mr. COLE. In other words, if the Federal funds had not been available to pay off the depositors——

Mr. HANDLEY. In my opinion, that would cause a mass run on the Association, and probably would affect the whole system. If the depositors learned that the Federally-insured savings and loan accounts were not going to get paid, they would lose confidence, certainly in that particular Association, and probably the whole system.

Mr. COLE. I take it you had an understanding from the Federal regulators at the time that that was something they did not want your department to do. Is that correct?

Mr. HANDLEY. Right.

Mr. COLE. In fact, Mr. Handley, if you had filed such an action in State court, you would have needed proof of insolvency, is that not correct, in order to have a receiver or a conservator appointed?

Mr. HANDLEY. Yes. Capital wouldn't pay it.

Mr. COLE. Did you have proof of insolvency at that time in the summer of 1986?

Mr. HANDLEY. No.

Mr. COLE. In fact, you did not have proof of the insolvency of the institution until almost a year later, in 1987, when an independent auditing firm completed their annual audit of Madison Guaranty Savings & Loan. Is that correct?

Mr. HANDLEY. That's correct, when a newly employed CPA firm by the new management put in place was employed to go over the books again. Peat Marwick was hired, and we received a copy of their audit report.

Mr. COLE. That is the national accounting firm of Peat Marwick that conducted that audit?

Mr. HANDLEY. Yes.

Mr. COLE. That firm was retained by the new management of Madison Guaranty that was put in place pursuant to the Cease and Desist Order by the Federal regulators?

Mr. HANDLEY. Yes.

Mr. COLE. The McDougals, and parties related to the McDougals, had been removed from the management at that time?

Mr. HANDLEY. That's correct.

Mr. COLE. So to sum up, during that interim period between 1986 and 1987, from the perspective of your department, the matter was being handled by Federal regulators in both a normal and appropriate way?

Mr. HANDLEY. Yes, pursuant to the Cease and Desist Order that had been entered into.

Mr. COLE. Ms. Schaffer, was that consistent with your understanding of what was occurring at the time? Did you feel that it

would have been necessary and appropriate for you to take any further action in view of the action that the Federal regulators had taken?

Ms. SCHAFFER. No, it wasn't necessary. The purpose of collaborating on what to do was to take care of it. One action—no, I don't think any other action was necessary, having accomplished the removal of the McDougals.

Mr. COLE. So you had consulted with the Federal regulators, and they had advised you of the course of action that they had intended to take, and you concurred in that action at the time?

Ms. SCHAFFER. Absolutely.

Mr. COLE. Did there then come a later time when the situation at Madison Guaranty worsened, and that you recommended to the Federal regulators that further steps be taken?

Ms. SCHAFFER. After the Cease and Desist Order was entered. Part of the Cease and Desist Order required that they fire the accounting firm, Frost and Company, and hire new auditors, and order appraisals on the properties in order to determine their value, so they could actually assess the financial condition of the savings and loan. Those audits were not completed when Peat Marwick was brought in until 1987. There was a significant delay in getting appraisals returned on real estate that they owned.

When they were completed, and we received them in 1987, it was at that point that we had the first proof of insolvency available to us to act on; and that's when we did it.

Mr. COLE. That is the point in time when you urged the Federal regulators to close the institution and pay off the depositors?

Ms. SCHAFFER. Right.

Mr. COLE. Is my understanding correct that they did not do so at that time?

Ms. SCHAFFER. They did not.

Mr. COLE. What was the reason they didn't take that action, even though you recommended it?

Ms. SCHAFFER. They didn't have any money, it was a low priority for them, given particularly the Dallas regional office had all of Texas and Louisiana. They had a number of disasters on their hands. If there was money available in the FSLIC to close an institution and pay off depositors, this would not be one of them.

The active policy at the Federal level with regard to insolvent savings and loans during this period was to leave them open, and to delay recognition of those losses forever, just about, at least, I mean—and it was—until after the 1988 election. I don't know that that was deliberate, but it's not a coincidence, I don't think, that all of them were closed in Arkansas that had been insolvent for a long time in March 1989.

Mr. COLE. So that we're all clear here, your department and the State of Arkansas did not have the funds to shut down either Madison or any other State-chartered savings and loan, and pay off the depositors?

Ms. SCHAFFER. They were Federally-insured, that money would have to come from the FSLIC. It would involve their agreement. They would have to agree that they would accept the receivership of the institution at the time, at the designated time.

We were told repeatedly that it was just not a high priority. There were many others waiting in line, and I think their attitude generally was the McDougals were the problem. They had been removed. There is new management. So there's not an emergency in terms of closing the institution, in that if it's left open there might be some further damage done to the institution. I mean, I think that generally the policy was to leave them open.

Mr. COLE. Finally, as we have seen here today, your efforts and activities as a State S&L regulator have been under tremendous scrutiny. Even looking back with hindsight today, is there anything more that you could have done beyond what you did to regulate this institution and prevent losses to the Insurance Fund and the taxpayers?

Ms. SCHAFFER. Not unless I could change the facts and the circumstances and the timing, and some of those things, too. I used my best judgment at the time.

Mr. COLE. And in terms of the powers that were available to you and to the State?

Ms. SCHAFFER. I'm comfortable with what we did.

Mr. COLE. Thank you.

The CHAIRMAN. Mr. Chertoff.

Senator SARBANES. Can I ask how much longer, Mr. Chertoff?

The CHAIRMAN. Probably about a half hour.

Mr. CHERTOFF. Ms. Schaffer, if you had knowledge or reason to suspect that a man who owned a large share of the stock in Madison Guaranty Savings & Loan was doing things that were illegal, it would have been incumbent upon you to notify the Federal authorities in Dallas and tell them that there was a problem going on at the bank, right?

Ms. SCHAFFER. That's not a question—I can't answer that question. If I had known from an examination our department did—we didn't do examinations.

Mr. CHERTOFF. If you knew just from anecdotal evidence, just from general knowledge?

Ms. SCHAFFER. Anecdotal evidence? A regulator should act on anecdotal evidence?

Mr. CHERTOFF. Could a regulator investigate based on anecdotal evidence?

Ms. SCHAFFER. Sure.

Mr. CHERTOFF. Now, I want to go back to this meeting at the Federal Home Loan Bank Board. Have you had an opportunity to look at this memo?

Ms. SCHAFFER. Parts of it. By the way, who wrote this memo?

Mr. CHERTOFF. It was written by someone at the Federal Home Loan Bank Board.

Ms. SCHAFFER. Someone? I'm not allowed to know who?

Mr. CHERTOFF. I can't tell you the identity of the person offhand. We have some notes. I guess somebody could compare them with the notes, but it was produced from the files. I'm not deliberately withholding it from you. It was one of the people who attended the meeting. By the way, if you disagree with one of the characterizations, you're free to do so. I'm not suggesting it's your document.

As you go down the second page, it says here, he refers to Faulk, "He also said that a Section 407 investigation will be started into

whether any 'shenanigans' are going on in the developments." Do you know what those "shenanigans" referred to?

Ms. SCHAFFER. I'm sorry. I don't know where.

Mr. CHERTOFF. Second page, right toward the bottom, right before Mr. Selig comes in and says something, the paragraph before that. Faulk says, "He also said that a Section 407 investigation will be started into whether any 'shenanigans' are going on in the developments." Do you know what the "shenanigans" were?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Do you know the developments were various real estate developments that Madison Financial, the investment subsidiary of Madison Guaranty, was making?

Ms. SCHAFFER. What?

Mr. CHERTOFF. Do you know what the developments were? They are talking about the real estate developments, right?

Ms. SCHAFFER. I am not going to interpret somebody's memo. I don't even know who wrote this. I don't know what whoever wrote this is referring to.

Mr. CHERTOFF. You don't remember any discussion about developments or problems with the real estate developments?

Ms. SCHAFFER. I'm sure there was discussion of problems in real estate developments, although I have absolutely no memory of any specific discussion of a specific real estate project.

Mr. CHERTOFF. Mr. Handley, you were at the meeting, right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Do you remember a discussion about shenanigans in the real estate development?

Mr. HANDLEY. I don't remember very much of the details of the meeting, just the general overall tone.

Mr. CHERTOFF. The general overall tone was that there was a lot of fishy activity at the savings and loan?

Mr. HANDLEY. There's a lot of bad problems at the savings and loan, and Mr. Faulk took a very firm and direct approach.

Mr. CHERTOFF. Also, Mr. Faulk was the Federal regulator, right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Ms. Schaffer, you suggested earlier that it would have been, I guess you implied that it would have been possible, had you wished to do something improper, to mention to the Governor—to prevent this proceeding from going forward. I'm not suggesting you would have wanted to do that. The fact of the matter is, at this point, on July 11, with the condition of this savings and loan as it had been found by the examiners, with straw men and fictitious purchasers and excessive compensation and inadequate documentation, there's no way that even the Governor of Arkansas could have stopped the Federal Government from going in and having this meeting and kicking Mr. McDougal out of the savings and loan, right?

Ms. SCHAFFER. I suppose he could have tried.

Mr. CHERTOFF. He could have tried. Do you think he would be successful in the face of all this?

Ms. SCHAFFER. I don't think he would have tried.

Mr. CHERTOFF. I want to go further on to this memorandum. There is a particular discussion on page 6 that I want to direct your attention to.

Again, I want you to bear in mind that in 1984, you did legal work with respect to this Campobello property, which is part of Madison Financial; that you did it for Jim Guy Tucker, who was a partner of Mr. Selig who came in in 1986 to represent the savings and loan. And Mr. Coburn says that he has a concern with the marketability of the deed to the Campobello project. Examiner Clark has not received a copy of the title insurance policy for the property as yet.

When you heard Campobello come up, did a bell go off? Did you say, "You know, I think I did something?" There it is; they're your former colleagues in the firm sitting at the table. It's not like it comes out of the blue. Your former colleagues at the firm are sitting at the table. There's a discussion of Madison. You recognize what Madison is. You just, in fact, contacted the Governor's office about the fact that this thing is coming up, and all of a sudden Campobello comes up.

At this point, did you say to yourself, "You know, I think I may have done something on this. Maybe I ought to recuse myself, or maybe I ought to say something about it?"

Ms. SCHAFFER. No.

Mr. CHERTOFF. Didn't ring a bell?

Ms. SCHAFFER. That's right.

Mr. CHERTOFF. Further down, Mr. Selig raises an issues. It says here, "John questioned the prohibition against doing business with Castle Sewer and Water. He indicated that it was necessary to do business with Castle Sewer and Water so that Castle Grande Estates can be a viable development project. He indicated that an agreement was being negotiated at the time but was not consummated." Do you remember this?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Would it refresh your memory if I told you that this refers to the fact that the Castle Sewer and Water Utility—one of the issues that Mr. Tucker and Mr. McDougal were trying to deal with was to get a hookup between that profitable utility and the Castle Grande Estates real estate development. Does that ring a bell?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Did you know that Mrs. Clinton had done work at the Rose Law Firm with respect to Castle Sewer and Water?

Ms. SCHAFFER. I think I found that out about the same time the rest of America found that out.

Mr. CHERTOFF. So you didn't know that at the time?

Ms. SCHAFFER. No.

Mr. CHERTOFF. I take it that that never was brought to your attention either by Mrs. Clinton or by the Governor, either directly or indirectly?

Ms. SCHAFFER. No.

Mr. CHERTOFF. What about you, Mr. Handley? Do you remember the discussion about Castle Sewer and Water?

Mr. HANDLEY. No, I don't.

Mr. CHERTOFF. Finally, let me turn to the last page. You appear, Ms. Schaffer, under the name Beverly Bassett.

Ms. SCHAFFER. Yes.

Mr. CHERTOFF. It says, and this is part of a private meeting—

Senator SARBANES. That was her name, I think.

Mr. CHERTOFF. I'm not suggesting anything sinister. It was your maiden name, right?

Senator SARBANES. You said she appeared under the name of. She appeared. That was her name.

Mr. CHERTOFF. This is a private meeting that occurs after the main meeting.

Ms. SCHAFFER. I object. It wasn't a private meeting. I don't even like that word.

Mr. CHERTOFF. I'm sorry, it says, "private meeting."

Ms. SCHAFFER. And I'm telling you it wasn't.

Mr. CHERTOFF. It was a non-private meeting?

Ms. SCHAFFER. It's not a private meeting.

Mr. CHERTOFF. What was it?

Ms. SCHAFFER. Well, I wouldn't even call it necessarily a meeting. It says what it says.

The CHAIRMAN. This was not a public meeting, was it?

Ms. SCHAFFER. The earlier part of the memo doesn't say. All the first was a private meeting too, then. It didn't just get private on this page.

The CHAIRMAN. OK. That's a very good point.

Mr. HANDLEY. I do recall that. I think they asked the attorneys representing the S&L to leave, and the board of directors—

Mr. CHERTOFF. Actually, I think if you look at the names, it sounds to me that what they asked was that the principals from the board of directors leave, and they wanted the attorneys to stay.

The CHAIRMAN. So there came a point in time when they asked the principals of Madison—that's what the notes refer to—and they wanted to speak without them there. So the regulators themselves—

Mr. HANDLEY. Could talk to the board of directors.

The CHAIRMAN. OK. That's what the notes meant.

Mr. CHERTOFF. Ms. Schaffer, it says here under your name, "She first got truly concerned about the Association . . ."—referring to Madison—" . . . when Sarah Hawkins called and asked for the Campobello files. Sarah said she couldn't find the Association's files. Beverly stated that she was not entirely convinced some files are not hidden." Who was Sarah Hawkins?

Ms. SCHAFFER. Sarah Hawkins worked for Madison Guaranty. I'm not sure what her title was, or position. She worked for Madison Guaranty in some capacity. I know she was the one interacting with the examiners on-site in terms of giving them documents and dealing with them about what they needed.

Mr. CHERTOFF. Why did she call you as the Commissioner, or why did she call the Securities Commission and ask for the Campobello files? What does this refer to?

Ms. SCHAFFER. I don't think she did.

Mr. CHERTOFF. What was the point you were making here?

Ms. SCHAFFER. That's why I would like to know who wrote this. I have no idea what this means. I have no idea what Sarah Hawkins called me about, or the Securities Department. I suppose that's what it says. I have no idea what this means.

Mr. CHERTOFF. So you don't remember getting truly concerned about Madison Savings & Loan when someone called and asked for the Campobello files?

Ms. SCHAFFER. No.

Mr. CHERTOFF. Do you remember expressing the view that you were not convinced that some files are not hidden?

Ms. SCHAFFER. I think I told you earlier that during the examination process that we were told by the Federal examiners on-site that they couldn't get documents from Madison. Madison was not cooperating with the examination. They were not providing the documentation requested. They did not cooperate. They did not turn over things that they had. If I made a comment about files being hidden, it was because somebody at Madison might be hiding files.

Mr. CHERTOFF. So you were getting reports during the examination itself from the examiners about what was going on?

Ms. SCHAFFER. I think Charles got some reports. I know that the examination report in March of 1986 made mention of the fact that they did not cooperate. Sarah Hawkins herself had been an examiner in the Dallas office and was hired by Jim McDougal from the Dallas office, so she had previously worked in the Dallas office as an examiner. Now, I have no idea what this means, and it doesn't even sound familiar to me. It doesn't even ring a bell.

Mr. CHERTOFF. Mr. Handley, do you remember this?

Mr. HANDLEY. Not specifically. But I think Sarah Hawkins phoned me and asked for copies of the Campobello files. She told me that the examiners wanted them, and she couldn't find hers. I thought that was real strange.

Mr. CHERTOFF. Did you tell that to Ms. Schaffer?

Mr. HANDLEY. I can't remember specifically, but I think I did, because we both thought that was real strange.

Mr. CHERTOFF. When was that? When did that happen?

Mr. HANDLEY. It was while the examination was going on.

Mr. CHERTOFF. That would have been in the spring of 1986?

Mr. HANDLEY. The first part of 1986.

Mr. CHERTOFF. In late February or early March?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Ms. Schaffer, does that refresh your memory that Mr. Handley talked to you about that?

Ms. SCHAFFER. Charles told me a lot of things during that time about Madison, what was going on, he could have. I mean, you expect me to remember because the word "Campobello" is there. And what I'm telling you is, in your mind, that's a lot more important than it is in mine, or was in mine at the time.

Mr. CHERTOFF. There's an indication from Sam Bratton's deposition that from time-to-time you would report to him on matters that touched on savings and loans. Did you talk to Mr. Bratton during the spring of 1986 about the examination that was going on at Madison?

Ms. SCHAFFER. I have no memory of talking to Sam about that.

Mr. CHERTOFF. Mr. Handley, I want to ask you a question from February 1992, specifically around February 11. You were working at the Securities Commission, right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Did a newspaper reporter come and seek to look at documents relating to any transactions involving Madison or Madison Guaranty, or any of its subsidiaries?

Mr. HANDLEY. We probably had 50 or 60 reporters come in and out.

Mr. CHERTOFF. Was there someone, do you remember specifically, early in February someone coming in from, maybe, The New York Times and asking to see some documents related to Madison?

Mr. HANDLEY. There were so many of them I can't keep them.

Mr. CHERTOFF. Did you call anybody at the Rose Law Firm as a consequence of getting any of those inquiries from reporters?

Mr. HANDLEY. No.

Mr. CHERTOFF. No?

Mr. HANDLEY. No.

Mr. CHERTOFF. Did you call anybody outside of the Securities Commission?

Mr. HANDLEY. Did I call anybody? No.

Mr. CHERTOFF. Did you ask anybody else to?

Mr. HANDLEY. No.

Mr. CHERTOFF. I want to be comprehensive in this. After receiving inquiries from a reporter or reporters in February 1992, about Madison or any entity connected with Madison, did you in any way communicate with somebody outside the Securities Commission, except for the reporter, about these newspaper inquiries?

Mr. HANDLEY. Well, there's people from the campaign that came to our office to look at them.

Mr. CHERTOFF. Did you reach out to the campaign and say that there are newspaper reporters looking at or asking questions about Madison?

Mr. HANDLEY. I think maybe when they came over, they asked that question, and I said, "yes."

Mr. CHERTOFF. When who came over?

Mr. HANDLEY. The lady was named Lynch.

Mr. CHERTOFF. Loretta Lynch?

Mr. HANDLEY. Yes, she came to our office.

Mr. CHERTOFF. How did she come to come to your office? How did that come about? She just appeared one day?

Mr. HANDLEY. Yes. She talked to the Commissioner at the time, Joe Madden, and said she was coming over in the morning to look at the files. And she came over and looked at the files.

Mr. CHERTOFF. How did you meet her?

Mr. HANDLEY. I was in charge of the files. So all the reporters—I got the pleasure of being with all 50 or 60 of them.

Mr. CHERTOFF. So how did you first learn that Ms. Lynch was coming over?

Mr. HANDLEY. I told you. The Commissioner said he had gotten a phone call from her, and she was coming over.

Mr. CHERTOFF. Did he tell you why she was coming over?

Mr. HANDLEY. To look at the files.

Mr. CHERTOFF. Any other explanation or background or what caused her to come over?

Mr. HANDLEY. She told me she worked for the Clinton campaign.

Mr. CHERTOFF. What files did she want to look at?

Mr. HANDLEY. All the files. All the public files.

Mr. CHERTOFF. On Madison?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Did you have any conversation with her?

Mr. HANDLEY. Yes, we talked while she was looking at the files.

Mr. CHERTOFF. What did you talk about?

Mr. HANDLEY. Just the files and how many reporters had been there.

The CHAIRMAN. So you had discussions with her about how many reporters had been there, what they had seen, and what they had been looking for?

Mr. HANDLEY. Well, everybody else asked what they had been looking for.

The CHAIRMAN. This is in February, or what is it?

Mr. HANDLEY. I can't remember the date.

The CHAIRMAN. The time that Ms. Lynch came to see you, do you recall?

Mr. HANDLEY. I can't remember the exact date.

The CHAIRMAN. How many reporters came in to see you before Ms. Lynch came? It wasn't 50 or 60, was it?

Mr. HANDLEY. I can't remember.

The CHAIRMAN. Suppose I told you it was one?

Mr. HANDLEY. I can't remember how many.

The CHAIRMAN. You said you were dealing with all these reporters. That's after. Isn't that true?

Mr. HANDLEY. It could be. I can't remember the dates they came.

The CHAIRMAN. You remembered Ms. Lynch coming over to see you. You remember the Commissioner saying, "By the way, someone from the campaign is going to come over to see you." Is that right?

Mr. HANDLEY. That's right.

The CHAIRMAN. What was the name of the Commissioner?

Mr. HANDLEY. Joe Madden.

The CHAIRMAN. So Commissioner Madden said to you, "By the way . . ."—was it "Charles?"

Mr. HANDLEY. Yes.

The CHAIRMAN. "Charles, there's a reporter who's going to come to see you."

Mr. HANDLEY. In her case, it wasn't a reporter. He told me she was working for Bill Clinton's campaign.

The CHAIRMAN. So Loretta Lynch came over to see you. Up until that point in time, did you have any reporters come to see you?

Mr. HANDLEY. I really can't remember. I can't remember when they came in. But I have dealt with them.

The CHAIRMAN. At some point, yes. Lots of reporters.

Mr. HANDLEY. Yes.

The CHAIRMAN. But up until that point, no reporters had come to see you, had they?

Mr. HANDLEY. Well, I can't remember. I am sure that some had, because—

The CHAIRMAN. Some had. Maybe one?

Mr. HANDLEY. I can't remember how many.

The CHAIRMAN. Do you remember the reporter coming to see you, or did you get a telephone call?

Mr. HANDLEY. There were so many, I can't remember.

The CHAIRMAN. Let's go back. The first time, no one had spoke to you about Madison. There came a time when you got an inquiry from a reporter. Is that correct?

Mr. HANDLEY. Yes, after I talked to, I think, Jeff Gerth on the phone several times.

The CHAIRMAN. So you got a call first from whom?

Mr. HANDLEY. Jeff Gerth.

The CHAIRMAN. Who is that? That's a reporter?

Mr. HANDLEY. Yes.

The CHAIRMAN. With whom?

Mr. HANDLEY. The New York Times.

The CHAIRMAN. Isn't it a fact that you first got a call from Mr. Gerth—you got the call, right?

Mr. HANDLEY. Yes.

The CHAIRMAN. When Mr. Gerth called, what did he ask you?

Mr. HANDLEY. We had about three or four conversations.

The CHAIRMAN. Tell me what he said when he first called you.

Mr. HANDLEY. He was asking about Madison Savings & Loan, and our regulation of it.

The CHAIRMAN. Did he ask you if you had files on that?

Mr. HANDLEY. Yes.

The CHAIRMAN. You told him you did, obviously.

Mr. HANDLEY. Yes.

The CHAIRMAN. And there were subsequent phone calls, or did he come to see you?

Mr. HANDLEY. I don't think—he may have. I can't remember.

The CHAIRMAN. Mr. Gerth called you—let's go back. I know this is not easy. This is 4 years ago. He called you and said: "I'm a reporter for The New York Times." You had never gotten a call from a reporter for The New York Times before this, did you?

Mr. HANDLEY. I don't know if he said he was with The New York Times. He said he was a reporter.

The CHAIRMAN. But you remember Mr. Gerth, because in fact there is a Mr. Gerth with The New York Times?

Mr. HANDLEY. Yes.

The CHAIRMAN. Did you tell someone about this phone call?

Mr. HANDLEY. I think Loretta Lynch asked who had been over to look at the files.

The CHAIRMAN. Did you tell someone in the Commission that you had received this call?

Mr. HANDLEY. Joe, my boss, Joe Madden.

The CHAIRMAN. Joe who?

Mr. HANDLEY. Joe Madden, the Commissioner.

The CHAIRMAN. So you did tell him?

Mr. HANDLEY. Sure.

The CHAIRMAN. "Joe, I have an inquiry from a reporter, Jeff Gerth." Is that right?

Mr. HANDLEY. Yes.

The CHAIRMAN. What did he say to you?

Mr. HANDLEY. I don't think he said anything.

The CHAIRMAN. How long after, then, did he tell you that someone from the campaign would come over to talk to you or to see the files?

Mr. HANDLEY. I honestly can't remember.

The CHAIRMAN. But he did tell you someone's going to come from the campaign.

Mr. HANDLEY. That someone had phoned him.

The CHAIRMAN. And indeed, did he tell you that it was going to be Ms. Lynch?

Mr. HANDLEY. Yes.

The CHAIRMAN. He said, "Loretta Lynch from the campaign is going to come to see you"?

Mr. HANDLEY. Yes. Look at the files.

The CHAIRMAN. OK.

Mr. CHERTOFF. Just one last question. Could it be that the sequence of time between the time you went to Mr. Madden and told him about the calls from Jeff Gerth and the time that you heard Loretta Lynch was coming over was about a day?

Mr. HANDLEY. It could be, I honestly can't remember.

Mr. CHERTOFF. It was real short, wasn't it, Mr. Handley?

Mr. HANDLEY. I don't really remember. I have dealt with so many people, even with Mr. Gerth, so many times.

The CHAIRMAN. Mr. Handley, be careful. Because at first you led the Committee to believe that there were 50 or 60 reporters. The fact of the matter is, one reporter made an inquiry and that was Jeff Gerth. That's the first person you remember making an inquiry?

Mr. HANDLEY. He was the first, yes.

The CHAIRMAN. You told that to the Commissioner. I am not suggesting you shouldn't have related that, but you did tell the Commissioner.

Mr. HANDLEY. I told him about everyone.

The CHAIRMAN. Exactly. And then he related to you this is what Counselor is asking you; was that pretty shortly after that?

Mr. HANDLEY. It could be. I mean, honestly, I can't remember now.

The CHAIRMAN. He recounted to you or said to you that someone from the campaign—and it was with specificity Loretta Lynch—was going to come over to look at the files. Is that correct?

Mr. HANDLEY. Yes.

The CHAIRMAN. But it wasn't that 50 or 60 reporters descended upon you initially. It was one inquiry.

Mr. HANDLEY. Most of them come after The New York Times.

The CHAIRMAN. How long after? Several weeks at least elapsed, didn't they?

Mr. HANDLEY. Some time after.

Mr. CHERTOFF. Were documents removed by Ms. Lynch?

Mr. HANDLEY. No, she got copies of them.

Mr. CHERTOFF. She got copies of things. Did anyone else come with her from the campaign at any time?

The CHAIRMAN. We're well over the time, so we'll return to this. Senator Sarbanes.

Senator SARBANES. Mr. Handley, what was it that they came to look at?

Mr. HANDLEY. Just all of our public documents.

Senator SARBANES. These were public documents?

Mr. HANDLEY. Yes.

Senator SARBANES. Publicly available? Anyone was entitled to come in and look at them?

Mr. HANDLEY. Yes.

Senator SARBANES. Did you show them documents that were not publicly available?

Mr. HANDLEY. No.

Senator SARBANES. So any reporter could show up and see these documents? Any citizen?

Mr. HANDLEY. And a lot of reporters did come in.

Senator SARBANES. That's right; over the course of time, I gather. And what they came and what they saw are documents that were publicly available. Is that correct?

Mr. HANDLEY. Yes.

Mr. BEN-VENISTE. Did Ms. Lynch, when she came in, did she ask you for something that was not public; that was secret or that was confidential?

Mr. HANDLEY. She never asked.

Mr. BEN-VENISTE. Was anybody from the campaign shown preferential treatment or provided with documents that weren't available to the press?

Mr. HANDLEY. No.

Mr. BEN-VENISTE. So if I understand what we have been spending the last 15 minutes on, someone from the press asked for public documents. You showed the public documents to the press. Someone from the campaign asked about it. Those were made available?

Mr. HANDLEY. Yes, we have no choice in that.

Mr. BEN-VENISTE. That's why they're public documents.

Mr. HANDLEY. That's right.

Mr. BEN-VENISTE. So the public can see them.

Mr. HANDLEY. That's right.

Mr. BEN-VENISTE. Well, we cleared that up.

Now, let me ask you about the Federal Home Loan Bank Board meeting in Dallas. At the meeting, things were discussed about how Mr. McDougal had run the bank improvidently, correct? There were things that were mentioned in there that gave the Bank Board a problem.

Mr. HANDLEY. You're asking me?

Mr. BEN-VENISTE. Mr. Handley?

Mr. HANDLEY. Yes.

Mr. BEN-VENISTE. Ms. Schaffer?

Ms. SCHAFFER. Absolutely.

Mr. BEN-VENISTE. The whole purpose of it was to see whether some action would be taken against Mr. McDougal?

Ms. SCHAFFER. Right.

Mr. BEN-VENISTE. So it was not a surprise that they should discuss things that they felt had been done by Mr. McDougal that were improvident, correct?

Ms. SCHAFFER. Right.

Mr. BEN-VENISTE. It did not come as a surprise to you that there should have been such a discussion?

Ms. SCHAFFER. No.

Mr. HANDLEY. That was the purpose of the meeting.

Mr. BEN-VENISTE. Indeed, you all—if I understand correctly—were in accord with the action that was to be taken; that is, the removal of the McDougals. Correct, Mr. Handley?

Mr. HANDLEY. Yes.

Mr. BEN-VENISTE. Ms. Schaffer?

Ms. SCHAFFER. Yes.

Mr. BEN-VENISTE. There wasn't any mystery about that?

Ms. SCHAFFER. No.

Mr. BEN-VENISTE. No one asked you to intercede on behalf of the McDougals with the Federal authorities, did they?

Ms. SCHAFFER. No.

Mr. HANDLEY. No.

Mr. BEN-VENISTE. No one misused any position of access to you in any way so that you could take action in some surreptitious or non-surreptitious way to benefit the McDougals. Is that correct, Mr. Handley?

Mr. HANDLEY. That's correct.

Mr. BEN-VENISTE. Ms. Schaffer?

Ms. SCHAFFER. Correct.

Mr. BEN-VENISTE. We cede back all of the time we may have accrued here, Mr. Chairman.

The CHAIRMAN. Mr. Giuffra?

Mr. GIUFFRA. Ms. Schaffer, did you have any discussions with anyone from the 1992 Clinton Presidential Campaign about Madison Guaranty?

Ms. SCHAFFER. I had several discussions.

Mr. GIUFFRA. With whom did you have those discussions?

Ms. SCHAFFER. Loretta Lynch.

Mr. GIUFFRA. When did you first speak with Loretta Lynch?

Ms. SCHAFFER. I don't remember. Sometime in February 1992.

Mr. GIUFFRA. Sometime in the second week of February, or before that?

Ms. SCHAFFER. I don't remember.

Mr. GIUFFRA. What do you recall about your discussions with Ms. Lynch of the Clinton Presidential Campaign in February 1992?

Ms. SCHAFFER. Just that she was the person on the campaign team who was trying to put together facts and a response of the campaign to questions that had been presented to them by a reporter from The New York Times.

Mr. GIUFFRA. Do you recall why Ms. Lynch was coming to you in particular? Had she been directed to come to you by anyone?

Ms. SCHAFFER. Because I'm the one who knew the most about it.

Mr. GIUFFRA. Did you show Ms. Lynch any files that you maintained at your law offices?

Ms. SCHAFFER. What?

Mr. GIUFFRA. Did you show Ms. Lynch any files that you maintained at your law office?

Ms. SCHAFFER. Well, I was in Fayetteville, Arkansas. She was in Little Rock, Arkansas. She didn't come to my office. I didn't have files in my office that I know of about Madison Guaranty.

Mr. GIUFFRA. Did she come down to Fayetteville to see you?

Ms. SCHAFFER. No, she did not.

Mr. GIUFFRA. Did you come up to Little Rock to see her?

Ms. SCHAFFER. No, I did not.

Mr. GIUFFRA. Did you speak on the telephone?

Ms. SCHAFFER. We did.

Mr. GIUFFRA. What did you tell Ms. Lynch about Madison Guaranty during the campaign when you spoke to her?

Ms. SCHAFFER. I told her what I told Jeff Gerth.

Mr. GIUFFRA. What was that?

Ms. SCHAFFER. Well, how much time do we have? I wrote at least two memorandums to him, and had several conversations with him. But I provided her with those memorandums after I sent them to The New York Times.

Mr. GIUFFRA. Did you speak to anyone else from the Clinton campaign?

Ms. SCHAFFER. About Madison? I don't think so.

Mr. GIUFFRA. Do you recall ever speaking to Mr. Lindsey during the 1992 Clinton Presidential Campaign about Madison?

Ms. SCHAFFER. Not about Madison.

Mr. GIUFFRA. What did you speak to Mr. Lindsey about?

Ms. SCHAFFER. I think some time much later in the campaign, I had a brief conversation with him about a question that had come up about a securities matter. I think basically it was a real general question about bond firms in Arkansas. It had nothing to do with savings and loans.

Mr. GIUFFRA. Did it have to do with something called ADFA?

Ms. SCHAFFER. No.

Mr. GIUFFRA. Did it have to do with Dan Lasater?

Ms. SCHAFFER. No. I think it was just—I had a conversation with Loretta Lynch, I think maybe, about Dan Lasater. But I didn't have that conversation with Bruce. Bruce, it was some general inquiry of a broad nature about securities firms, and it didn't involve a specific firm or a company.

Mr. GIUFFRA. What do you recall about the context of the conversation that you had with Mr. Lindsey about securities firms in Arkansas? Do you remember why he was asking you that question?

Ms. SCHAFFER. I don't really remember. Somebody made a general inquiry about bond firms in Arkansas, and Bruce asked me about it in a real quick conversation that I can't really remember any details on. I think I may have sent the campaign some information on that.

Mr. GIUFFRA. Do you recall specifically what sort of information you would have sent the campaign?

Ms. SCHAFFER. I think it was a memorandum, maybe, that had to do with a general overview of what our office had done in addressing problems with bond firms in Arkansas. I would have to look and see.

Mr. GIUFFRA. Was this a memorandum that you had prepared while you were the Arkansas Securities Commissioner?

Ms. SCHAFFER. Yes.

Mr. GIUFFRA. You had taken the memorandum with you when you left your position?

Ms. SCHAFFER. I think I got the office maybe to either get it for me—I might have had a copy.

Mr. GIUFFRA. Then you sent it to the Clinton campaign?

Ms. SCHAFFER. I think so. That was much later in the campaign.

Mr. GIUFFRA. Was this after Governor Clinton had been nominated to be the Democratic nominee?

Ms. SCHAFFER. I don't have any idea.

Mr. GIUFFRA. You mentioned you spoke to Loretta Lynch about Dan Lasater.

Ms. SCHAFFER. I think maybe—I just don't know—I think maybe I was asked a question about that. Oh, I think maybe the L.A. Times was doing some story about that, and I think there was an inquiry about it that maybe I sent a press clipping or something like that. I don't remember.

Mr. GIUFFRA. What do you know about Dan Lasater?

Ms. SCHAFFER. I know a lot about Dan Lasater.

Mr. GIUFFRA. Had you regulated Dan Lasater during the time you were Securities Commissioner?

Ms. SCHAFFER. Yes.

Mr. GIUFFRA. Do you recall the specific question that the L.A. Times put to you about Dan Lasater?

Ms. SCHAFFER. I don't think the L.A. Times talked to me.

Mr. GIUFFRA. That Ms. Lynch put to you from the L.A. Times?

Ms. SCHAFFER. Well, I think she just wanted the records from the Arkansas Securities Department, which she got, was my understanding.

Mr. GIUFFRA. Did you make any calls to anyone to get all those records?

Ms. SCHAFFER. No.

Mr. GIUFFRA. Did you provide any records to Ms. Lynch about Dan Lasater?

Ms. SCHAFFER. I wouldn't have had any official records. I might have written a memorandum. I just don't remember. I'll be happy to look and see and give it to you, but you all subpoenaed, served a subpoena back in August, that was included in that. I'm sure you have it if I had it.

Mr. GIUFFRA. Did the question Ms. Lynch put to you about Mr. Lasater have anything to do with Mr. Lasater's relationship with Governor Clinton?

Ms. SCHAFFER. No, I don't think so.

Mr. GIUFFRA. Did it have anything to do with Mr. Lasater's bond firm and its underwriting of bond contracts by something called the Arkansas Development Finance Authority?

Ms. SCHAFFER. I don't think so.

Mr. GIUFFRA. Did you discuss Madison during the campaign with Susan Thomases?

Ms. SCHAFFER. I have never had a conversation with Susan Thomases.

Mr. GIUFFRA. Did you discuss Madison with Webster Hubbell?

Ms. SCHAFFER. No.

Mr. GIUFFRA. Did you discuss Madison with Mrs. Clinton?

Ms. SCHAFFER. No.

Mr. GIUFFRA. Governor Clinton?

Ms. SCHAFFER. No.

Mr. GIUFFRA. Did you discuss anything having to do with the Rose Law Firm's representation of Madison with anyone during the 1992 campaign?

Ms. SCHAFFER. With anyone?

Mr. GIUFFRA. With someone from the campaign?

Ms. SCHAFFER. With someone from the campaign? I mean, to the extent my memos and responses to Jeff Gerth address that, I'm sure I told them the same thing.

Mr. GIUFFRA. So was your only point of contact Loretta Lynch at the campaign?

Ms. SCHAFFER. That's who I dealt with with the campaign, Loretta Lynch.

Mr. GIUFFRA. Do you recall the number of occasions that you spoke to Ms. Lynch during the campaign?

Ms. SCHAFFER. Half a dozen.

Mr. GIUFFRA. Half a dozen, you say. Do you recall any of the questions that Ms. Lynch put to you during the campaign?

Ms. SCHAFFER. The same ones that Jeff Gerth had put to me. The same ones we're still talking about.

Mr. GIUFFRA. And did she ask you whether you had ever spoken to Mrs. Clinton in connection with a preferred stock offering by Madison?

Ms. SCHAFFER. Did she what?

Mr. GIUFFRA. Did she ever ask you whether you had spoken to Mrs. Clinton in 1985 about a proposed preferred stock offering by Madison?

Ms. SCHAFFER. I don't know, she might have. At that time, I probably would have said no, because I didn't remember having a conversation with—I mean, that brief phone conversation is not something I remembered having when I initially reviewed in my mind what happened with Madison Guaranty. It was not until I was trying to figure out why the letter was written to Hillary—I mean, it's taken me 4 years to recall this kind of detail about that.

Mr. GIUFFRA. When you were Arkansas Securities Commissioner, do you recall a case involving Mr. Lasater's firm? There was a complaint by a man named Dennis Patrick involving money that was going through his account without his knowledge.

Ms. SCHAFFER. No.

Mr. GIUFFRA. You don't recall any complaint by a man named Dennis Patrick involving Mr. Lasater's firm?

Ms. SCHAFFER. I wouldn't necessarily see a customer complaint. It wouldn't be brought to me by the staff, and they certainly all weren't.

Mr. GIUFFRA. So the record is clear, other than Ms. Lynch, you don't recall speaking to anyone else from the Clinton campaign about Madison Guaranty. Is that right?

Ms. SCHAFFER. The Clinton campaign? The best I can recall, Loretta Lynch was the person I talked to. She was the one who called and asked me about Madison. I gave her my memos.

Mr. GIUFFRA. Did you give her any other documents besides your memos?

Ms. SCHAFFER. I asked for the documents from the Securities Department, but I didn't have them.

Mr. GIUFFRA. They were sent to you from the Securities Department?

Ms. SCHAFFER. Well, copies of microfilm copies were sent to me. I couldn't read them, really. They're not legible. But that's what I asked for from them. I didn't have those.

Mr. GIUFFRA. OK, then. Did you send those back to the campaign?

Ms. SCHAFFER. No, I didn't do that. Loretta was in Little Rock. I think she could go get them herself.

Mr. GIUFFRA. Did you speak to anyone else during the campaign that you recall from the campaign?

Ms. SCHAFFER. From the campaign about Madison?

Mr. GIUFFRA. About Madison Guaranty, yes.

Ms. SCHAFFER. No.

Mr. GIUFFRA. So you didn't speak, for example, to Betsey Wright?

Ms. SCHAFFER. I didn't talk to Betsey, no.

Mr. GIUFFRA. Diane or Jim Blair?

Ms. SCHAFFER. I might have had a conversation with Diane when I was trying to get ahold of Loretta. I think they were in the same little area.

Mr. GIUFFRA. Did you ever visit the campaign?

Ms. SCHAFFER. No. She might have answered the phone, but I don't think we talked in any detail. I mean, I might have said, "Where is Loretta? She asked me to return the call." Something like that, and generally had a discussion like that.

I did talk to Jim Blair on, I don't know, a few occasions during this time period. He did not work for the campaign, it's my understanding.

Mr. GIUFFRA. What did you speak to Mr. Blair about with regard to Madison Guaranty?

Ms. SCHAFFER. He was interested in finding out what I could remember about the telephone conversation that occurred between Hillary Clinton and myself.

Mr. GIUFFRA. Did he indicate to you why he was interested in finding out about the telephone conversation between yourself and Mrs. Clinton?

Ms. SCHAFFER. My understanding is it was an effort to respond—actually, you know, I think that it was after The New York Times story ran.

Mr. GIUFFRA. Do you recall anything more about any communications you might have had with Mr. Blair about Madison during 1992?

Ms. SCHAFFER. Well, I'm sure it's possible. Gosh, I don't know. I'm sure that he discussed it with me on more than one occasion. I just can't—I mean, you know, it could have been two or three. I don't want to limit it here. I'm sure we talked about it.

Mr. GIUFFRA. Did Mr. Blair ever indicate to you that he was speaking to a man named Sam Heuer, who was a lawyer for Mr. McDougal?

Ms. SCHAFFER. He might have.

Mr. GIUFFRA. Do you know Mr. Heuer?

Ms. SCHAFFER. I'm acquainted with Sam.

Mr. GIUFFRA. Have you ever spoken to Mr. Heuer about anything having to do with Madison or Mr. McDougal?

Ms. SCHAFFER. You mean since the campaign?

Mr. GIUFFRA. At any time.

Ms. SCHAFFER. I don't think so.

Mr. GIUFFRA. But it was your understanding that Mr. Blair was speaking to Mr. Heuer during this 1992 period?

Ms. SCHAFFER. I don't know that I knew that from Jim Blair or Sam Heuer. I knew there were a lot of people talking to a lot of people trying to get the facts as to what happened, to respond.

Initially, I think the effort was to respond to the questions of the reporter. But I think—I am not sure that some of these conversations didn't occur after the story ran in attempting to continue to respond to it.

Mr. GIUFFRA. Did anyone indicate to you that there was concern about whether Mr. McDougal might make any allegations about the Clintons?

Ms. SCHAFFER. Say that again.

Mr. GIUFFRA. Did anyone indicate to you that they were concerned in any way that Mr. McDougal might make any allegations about the Clintons?

Ms. SCHAFFER. I think he already had.

Mr. GIUFFRA. What allegations were those that Mr. McDougal was making that you're aware of?

Ms. SCHAFFER. Whatever The New York Times story, the basic thrust of the story was, that's what I understood to be the concern.

Mr. GIUFFRA. After January 20, 1993, did you speak to anyone at the White House about Madison Guaranty?

Ms. SCHAFFER. After when?

Mr. GIUFFRA. After January 20, 1993, did you speak to anyone at the White House about Madison Guaranty?

Ms. SCHAFFER. Myself?

Mr. GIUFFRA. Yes. Did you ever speak to Mr. Lindsey, for example, about Madison Guaranty?

Ms. SCHAFFER. I don't think Bruce and I talked about it.

Mr. GIUFFRA. You don't think you ever spoke to Mr. Lindsey during 1993 or 1994 about Madison Guaranty?

Ms. SCHAFFER. I may have talked to Bruce. I talked to so many people during this time, I can't remember a specific conversation. But it is entirely possible I talked to Bruce in an effort to get the information to him, get the facts to him about what did happen. The whole question had come up again, and they were attempting to respond to the question. So it's entirely possible I was asked by him directly for some information. I just don't know. It wasn't of any consequence to me that he asked.

The CHAIRMAN. Could you suspend for just a moment?

We've gone over the 15 minutes. I don't know. Do you have much longer to go on this line? With the acquiescence—or, we'll yield to Senator Sarbanes at this point. Then you can pursue it thereafter.

Senator SARBANES. Why don't we finish up.

Mr. GIUFFRA. Ms. Schaffer, do you recall speaking to anyone named Neil Eggleston, who was an Associate White House Counsel during 1993 and 1994?

Ms. SCHAFFER. No.

Mr. GIUFFRA. Do you know who Neil Eggleston is?

Ms. SCHAFFER. I saw him here last week.

Mr. GIUFFRA. Would it be your best recollection you might have spoken to at the White House during 1993 or 1994 about Madison Guaranty would have been Bruce Lindsey?

Ms. SCHAFFER. Probably.

Mr. GIUFFRA. Do you think you might have spoken to Mr. Kennedy, William Kennedy?

Ms. SCHAFFER. Bill Kennedy? No.

Mr. GIUFFRA. How about President Clinton himself?

Ms. SCHAFFER. About the fact of Madison Guaranty?

Mr. GIUFFRA. Anything having to do with Madison Guaranty. The fact that you were the Arkansas Securities Commissioner during 1985, 1986, 1987.

Ms. SCHAFFER. Yes, I'm sure he mentioned it to me.

Mr. GIUFFRA. What do you recall about any conversations that you had with President Clinton? Let me start at the beginning. Do you recall specifically when you might have spoken to President Clinton about anything having to do with Madison Guaranty during 1993 or 1994?

Ms. SCHAFFER. Well, in 1993, it could have been, probably was, because it would have been very few occasions when I would have seen him. But it is possible that it was—I know my husband and I sometime in 1993, I can't remember exactly when, went to the White House. We attended a movie, you know. The movie room—

Mr. GIUFFRA. The screening room at the White House?

Ms. SCHAFFER. Right. We were invited by a mutual friend of ours and the President's to come.

Mr. GIUFFRA. Who was the mutual friend?

Ms. SCHAFFER. Paul Berry.

Mr. CHERTOFF. Who is Paul Berry?

Ms. SCHAFFER. He's an Arkansan who works in Washington.

Mr. GIUFFRA. Who else was present during this movie?

Ms. SCHAFFER. I don't know, 30 people or so.

Mr. CHERTOFF. Do you recall approximately when it was you attended this movie at the White House?

Ms. SCHAFFER. Well, I don't come to Washington very often. I think it was in January—it would be January 1994.

Mr. GIUFFRA. What do you recall the President saying to you about Madison Guaranty in January 1994?

Ms. SCHAFFER. That he was sorry. He apologized to me about what had happened to me, that he felt badly about all that I had been put through because of it, and was sorry to see that happen.

Mr. GIUFFRA. Did he ask you any questions having anything to do with what you might have done as Arkansas Securities Commissioner during the 1980's with regard to Madison Guaranty?

Ms. SCHAFFER. No. He didn't talk, we did not talk about the substance of the matter. He apologized to me for what had happened.

Mr. GIUFFRA. Did he in any way indicate to you that he thought you had done a good job in the campaign with regard to responding to press inquiries about Madison Guaranty?

Ms. SCHAFFER. Did he tell me that?

Mr. GIUFFRA. Did he indicate to you in any way that he thought you had done a good job with regard to responding to press inquiries about Madison Guaranty?

Ms. SCHAFFER. No, no. He told me he was sorry.

Mr. GIUFFRA. No further questions.

The CHAIRMAN. Mr. Chertoff, do you have any follow-up?

Mr. CHERTOFF. Just a couple, Mr. Chairman.

Mr. Handley, am I correct—this issue in the spring of 1985 regarding permission to issue preferred stock for Madison Savings & Loan was the first time that came up in Arkansas?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. How many times since then have the savings and loans sought to issue preferred stock in Arkansas, let's say during the next couple of years, through the balance of 1985–1986?

Mr. HANDLEY. None. But we have lost a lot of savings and loans due to the mergers and liquidations.

Mr. CHERTOFF. So your answer is “none?”

Mr. HANDLEY. Right.

Mr. CHERTOFF. This was the only one?

Mr. HANDLEY. Right.

The CHAIRMAN. Prior to 1985, did you know of any savings and loan in Arkansas that applied for the issuance of preferred stock to recapitalize?

Mr. HANDLEY. No.

The CHAIRMAN. How long have you been there?

Mr. HANDLEY. Since 1969.

The CHAIRMAN. So from 1969 through the 1985–1986, you're not aware of any savings and loan attempting to issue preferred stock?

Mr. HANDLEY. No. None has.

The CHAIRMAN. This was novel, wasn't it?

Mr. HANDLEY. Well, the Fed started doing it—

The CHAIRMAN. Please do not direct how I pose questions.

Now, let me ask you. This, indeed, was the first time permission was asked—

Mr. HANDLEY. For a State-chartered savings and loan? Yes.

The CHAIRMAN. So, are you an attorney?

Mr. HANDLEY. No, I'm an accountant.

The CHAIRMAN. Did Mr. Brady express any concern to you?

Mr. HANDLEY. I never talked to Mr. Brady about it.

The CHAIRMAN. As it related to this matter?

Mr. HANDLEY. Right.

The CHAIRMAN. You never had any conversation with Mr. Brady?

Mr. HANDLEY. No, I didn't.

The CHAIRMAN. Were you aware that Mr. Brady had a different opinion?

Mr. HANDLEY. No.

The CHAIRMAN. You were not aware?

Mr. HANDLEY. I was not aware.

The CHAIRMAN. And you were not aware, nor did he tell you that he thought you should seek the counsel of the State's Attorney General?

Mr. HANDLEY. He didn't tell me that. I wasn't aware of that.

The CHAIRMAN. How did this come to your attention?

Mr. HANDLEY. That he disagreed?

The CHAIRMAN. No, the question relating to the issuance of preferred stock by Madison.

Mr. HANDLEY. I returned a phone call to a Madison employee in the first part of April named Fitzhugh.

The CHAIRMAN. Somebody called you in April? Who?

Mr. HANDLEY. His name was Fitzhugh. He was an employee of Madison. He was talking about issuing preferred stock, and wanted to know if he had to make an application or what he had to do.

The CHAIRMAN. You brought this up to Ms. Schaffer?

Mr. HANDLEY. I wrote a memo telling Beverly and Nancy that that occurred. I told Mr. Fitzhugh that he should write a letter setting forth that, and a request that we approve that issue.

The CHAIRMAN. The next time you received anything on that matter, would it be fair to say, was when you received the letter from the Rose Law Firm from Mrs. Clinton?

Mr. HANDLEY. Yes, the April 30th letter.

The CHAIRMAN. Mr. Brady, when did you commence working for the Securities—the State Home Loan Bank Board? Is that—

Mr. BRADY. Well, I work for the State Securities Department. But the Securities Commissioner wears several hats, and one of them was Savings and Loan Supervisor or whatever.

The CHAIRMAN. When did you start working for the Commission?

Mr. BRADY. Well, just a moment. I don't want to misstate.

February 1979 through April 1986.

The CHAIRMAN. Is it fair to say that you have never experienced a request of an application before the Commission to issue preferred stock on behalf of a State-chartered S&L?

Mr. BRADY. Yes, sir. This is the only time I know of that that issue came up.

The CHAIRMAN. So it was a novel issue when it came to you. Is that correct?

Mr. BRADY. Yes, sir.

The CHAIRMAN. How did it come to your attention?

Mr. BRADY. Ms. Bassett gave me the memo in there. There's a copy someplace. She has a note up there. It says, "Brady—Please review and draft reply to Hillary. May 6, 1985."

The CHAIRMAN. I see. You reviewed it and you drafted a reply?

Mr. BRADY. I don't know that I drafted a reply.

The CHAIRMAN. You drafted a memo?

Mr. BRADY. In my recollection, I drafted or would have drafted a memo explaining my objection to the plan. The fact was that I was not sure that that was permissible, as the Rose Firm was—as I say, that memo has never shown up. I don't know who has it or had it or what. But I'm sure I sent it, and she disagreed with me, as I said earlier today.

The CHAIRMAN. After you made your report or your memo or your recommendation, you're sure you disagreed—and by the way, you did have an opportunity to review the Rose memo?

Mr. BRADY. I did see that. That was handed to me.

The CHAIRMAN. After you indicated the questions that you—

Mr. BRADY. Those are questions of Nancy Jones, that 1, 2, 3, 4 on the thing that's on the screen here. Those are Ms. Jones' questions.

The CHAIRMAN. Those are Ms. Jones' questions.

Did you have occasion, then, to speak to other members of the Commission, or other staffers or other people, with regard to your opinion?

Mr. BRADY. In looking through my deposition I assumed, I guess improperly, that I had spoken to Charles about it or to Ms. Jones.

The CHAIRMAN. Why do you say you assumed?

Mr. BRADY. I would normally have said something about this memo. But if I don't remember it, I guess I didn't.

The CHAIRMAN. In your normal course of business, would you have then discussed this with Charles or some others? I mean, Ms. Schaffer came——

Mr. BRADY. Not really. It was asking for a legal opinion, and they were accountants. But I might have discussed it.

The CHAIRMAN. And that was your legal——

Mr. BRADY. Yes.

The CHAIRMAN. Who asked you for the legal opinion?

Mr. BRADY. Ms. Bassett. I mean, she asked me to sign off on a memo that the Rose Firm had sent over, saying their suggested reply was it's permissible.

The CHAIRMAN. Your reply, as you have testified previously and indicated in your deposition, was that you felt they should go to the Attorney General. This was a novel question, wasn't it?

Mr. BRADY. It was a novel question, and it would protect the Commissioner. She could rely on the Attorney General's decision as to whether it was permissible or not, and not involve herself.

The CHAIRMAN. Mr. Handley, you're not an attorney, are you?

Mr. HANDLEY. No.

The CHAIRMAN. You had never had occasion to research this previously, had you?

Mr. HANDLEY. No.

The CHAIRMAN. How did you reach this conclusion that this should be done? What was your basis?

Mr. HANDLEY. Initially I had a question about it. There's a memo in here that I wrote to Beverly and Nancy that said our Act only speaks of permanent capital stock, not preferred stock. So I said I think we should get a legal opinion on this, whether it should be done. If we can do it, I think we can do it under the "Wild Card Provision." That provision in our Act says that a State charter can do anything that a Federal savings and loan can do. So initially I had concerns about it, but after talking to Nancy and Beverly——

The CHAIRMAN. Who is Nancy?

Mr. HANDLEY. Nancy Jones.

The CHAIRMAN. Yes.

Mr. HANDLEY. She was the Chief Examiner at the time.

The CHAIRMAN. She was the Chief Examiner?

Mr. HANDLEY. My immediate supervisor.

The CHAIRMAN. Was she an attorney?

Mr. HANDLEY. No, she was an accountant.

The CHAIRMAN. She was an accountant. And to the best of your knowledge, she had never——well, you had been there since 1969?

Mr. HANDLEY. Yes.

The CHAIRMAN. This is the first time you ever received a request for this kind of treatment. Is that true?

Mr. HANDLEY. That's right.

The CHAIRMAN. What did she base it on? Did she go to the Attorney General, do you know?

Mr. HANDLEY. I don't know. I'm sure she didn't. This note that's on the screen is her reply.

The CHAIRMAN. Yes, I see that. "The problem, not addressed by the Rose Firm, is the Non-Voting portion. I don't know if 'Capital Notes' authorized under Federal statute is non-voting, but the preferred stock is a similar debt/equity instrument."

I mean, did she have the legal background to give you—you didn't rely on this. You went to the legal officer. Do you recall Mr. Brady's memo? He says he thought you would have discussed this.

Mr. HANDLEY. I have never talked to Bill or seen him about this.

The CHAIRMAN. Now, Ms. Schaffer, this was an unusual request then, wasn't it?

Ms. SCHAFFER. No, it was not an unusual request.

The CHAIRMAN. Well, look. Here is a memo, and if you want to interpret the memo—this was the first time the Commission had ever received such a request, to your knowledge. Were you aware of any similar requests made by a State-chartered, Federally-insured institution to be authorized to issue preferred stock?

Ms. SCHAFFER. I had to make decisions like this everyday on questions of interpretation, on matters that hadn't been done precisely that way before.

The CHAIRMAN. But this is the first time you had ever received such a request?

Ms. SCHAFFER. That's too broad for me. That's too broad a statement.

The CHAIRMAN. Let me try to narrow it. When did you become Commissioner?

Ms. SCHAFFER. In January 1985.

The CHAIRMAN. Well, prior to this letter, and any feedback, Mr. Handley indicated to you that someone from Madison Bank had inquired about the issuance of preferred stock. Had you ever reviewed the legal implications with regard to permitting a State-chartered institution to offer or sell preferred stock?

Ms. SCHAFFER. Until March?

The CHAIRMAN. Until this inquiry came to you. This question was unique, right? It had never been raised before?

Ms. SCHAFFER. It hadn't been decided prior, I think.

The CHAIRMAN. Isn't this the first time, indeed, that an application or the question of whether such a proposal was legal—whether involving Madison or another State savings and loan—had been raised?

Ms. SCHAFFER. Yes.

The CHAIRMAN. It was the first time, so it was unique.

Ms. SCHAFFER. It was the first time, I'll agree with that.

The CHAIRMAN. Obviously if something hadn't taken place before, it certainly wasn't the custom or the practice. And, it was the first time. As a matter of fact, are you aware of any other similar request to the Commission after that one?

Ms. SCHAFFER. Pardon me?

The CHAIRMAN. Did any other application requesting similar treatment ever come before the Commission?

Ms. SCHAFFER. I believe there was a savings and loan in Arkansas, a State-chartered savings and loan, in 1990 or at some point—and I don't know what year—but it did issue preferred stock.

The CHAIRMAN. Ms. Schaffer, this was unprecedented, wasn't it?

Ms. SCHAFFER. What was unprecedented?

The CHAIRMAN. This request to issue preferred stock. It was unprecedented. It had never been asked before. It was unique. Isn't that true?

Ms. SCHAFFER. The question had never been interpreted. I mean, the issue, the question of whether State law prohibited or authorized issuance of preferred stock had not been decided.

The CHAIRMAN. So this is the first time it had ever come up. It was unprecedented. It was unique.

Ms. SCHAFFER. It's the first time that it had been decided, as far as I know, or interpreted by the department.

The CHAIRMAN. Had you ever made a ruling? Had the Commission ever made a determination prior to that with respect to the issuance of preferred stock one way or the other?

Ms. SCHAFFER. The department?

The CHAIRMAN. Yes.

Ms. SCHAFFER. No. We were charged with interpreting our own laws.

The CHAIRMAN. But the question had never come before, isn't that right? This is the first time.

Ms. SCHAFFER. Right.

The CHAIRMAN. Others—not you or me—have characterized this as routine. Indeed, what was Mr. Brady's position at the time with the Commission? What was your position, Mr. Brady?

Mr. BRADY. Staff attorney.

The CHAIRMAN. You were the staff attorney. Would the Commission regularly approach you for legal opinions on matters similar to this matter related to securities issues?

Mr. BRADY. While I was there, there was often more than one attorney that opinions would be requested of.

The CHAIRMAN. By the way, did you discuss this with other staff attorneys or just with Ms. Schaffer?

Mr. BRADY. I don't believe there were other staff attorneys on board at that time.

The CHAIRMAN. You were the only staff attorney?

Mr. BRADY. I believe so.

The CHAIRMAN. Ms. Schaffer, so you went to Mr. Brady for his expertise. He was the staff attorney. You assigned him this. Is that correct?

Ms. SCHAFFER. He was the only attorney on the staff, and I asked him to draft the letter. Had I had an attorney on the staff that I had hired, in whom I had confidence and could delegate something to in confidence, send it out that way, that's the way it would have been done. That's the way it would have been handled.

The CHAIRMAN. You would go to your staff attorney and ask him?

Ms. SCHAFFER. If I had confidence in—

The CHAIRMAN. Good. By the way, again, the purpose of this—because this is the first time I've heard it rumored that there was no similar request which resulted in an initial alternative response. We understand that they never did go forward. But this was unique, and I think that the American people have been told that this wasn't anything unusual. Indeed, in the State of Arkansas, this was a unique request.

Therefore, I don't think it's unreasonable when we find out the Rose Law Firm, and Mrs. Clinton made a call, sent a letter, for

people to say, "Well, what do you think? Why is it?" You knew, obviously, who Mrs. Clinton was, right?

Ms. SCHAFFER. Obviously.

The CHAIRMAN. She was married to the Governor.

Ms. SCHAFFER. And she was a partner in the Rose Law Firm.

The CHAIRMAN. But the Governor appointed you, whether as a result of his relationship with your brother, you knew that. You knew that this was the first time this request had ever come in. It was indeed impressive. Is that correct?

Ms. SCHAFFER. I did not spend nearly as much time thinking about it as everybody else.

The CHAIRMAN. I'd like to attempt to deal with something. It's been an impression that's been put out—not by yourself, although you've commented too, as it related to this whole situation of when you can close a bank down and when you can't close a bank down.

I have just received, for the first time, a copy of the Act 1043 of 1985 and Act 45 of 1987. It deals with the ability and the powers of the State banking regulator.

Pursuant to that, I've been advised that as of 1985, that your title was Commissioner?

Ms. SCHAFFER. Yes.

The CHAIRMAN. Banking Commissioner?

Ms. SCHAFFER. No, Arkansas Securities Commissioner.

The CHAIRMAN. But weren't the State-chartered banks under your control?

Ms. SCHAFFER. No, State-chartered savings and loans.

The CHAIRMAN. Until today, it has been repeated that you had no authority to do anything, that you needed the Federal Home Loan Bank Board and the Federal authorities to enter into an agreement.

I have been told that the law as it still exists gave you the authority to close that bank, and that notwithstanding even a State institution or State superintendent—or Commissioner, as in your case—ordering a bank to be shut down, that the Federal people would still be responsible for paying back the depositors. Isn't that the case?

Ms. SCHAFFER. If they agreed to accept the receivership.

The CHAIRMAN. They didn't have to take the institution into receivership. You had the ability to close them, and that indeed they were, pursuant to FSLIC, responsible for paying back those depositors. Isn't that true?

Ms. SCHAFFER. In theory, that's the way it should have worked. But we know that's not how it worked.

The CHAIRMAN. Ms. Schaffer, if you know someone's a rogue and a scoundrel, and is doing the kinds of things that that board outlined at the meeting in Texas, that you attended—you did have the ability to close him down.

Ms. SCHAFFER. I have never said we didn't have the statutory authority.

The CHAIRMAN. I think it's been indicated that was not the case.

Ms. SCHAFFER. Not by me. I will stipulate that we had the statutory authority. We had to go through certain steps to do that, and it had to be tendered to the FSLIC, and the grounds had to be

proved in a court proceeding. So all of that, that statutory grounds existed for a receivership.

The CHAIRMAN. I just wanted to put the situation in context. I have no further questions.

Senator Sarbanes.

Senator SARBANES. Ms. Schaffer, what did the Federal regulators say to you about Madison? You consistently followed their advice, did you not, or their counsel?

Ms. SCHAFFER. I did.

Senator SARBANES. I take it the Chairman is suggesting that you would have had to show they were insolvent in order to close them down?

Ms. SCHAFFER. We would have had to have proof that they were insolvent, there was a substantial dissipation of assets, and/or—I think the other ground might be operating in an unsafe and unsound condition. Those grounds would have to be proved in a court proceeding. The institution would have to be tendered to the FSLIC.

In other words, they would have to agree in that court proceeding, appear in that court proceeding, and accept the institution. I had been told on several occasions in 1985, with other institutions, that they weren't prepared to accept institutions at this time like our small institutions. They had Texas institutions waiting to be closed, and no money. The active policy was to delay, to do everything that's possible to make sure that the depositors' money was safe, but short of closing the institution and making the depositor pay off.

Theoretically, we could have ignored their advice to us, which was, we don't want an institution closed that we're not ready to accept, for all of the reasons that make perfect sense. If you tender the institution to the FSLIC, and they say, "We don't have time and we don't have money," the very next thing that's going to happen in 1985 when the general public isn't aware that their deposits may not be safe, there's a run on the institution. Not just that one, but every other one.

Because as far as I know, in 1985, there was no general discussion in the press, and common knowledge certainly didn't exist the way it did later in the 1980's, that their money was not really safe.

Senator SARBANES. So if you had moved in contradiction to the position of the Federal people, it might well have triggered a serious financial situation.

Ms. SCHAFFER. They were very concerned. They did not want us—in 1985, we had a discussion with them about another savings and loan in Conway. I suggested, "Well, we can just put them in receivership without you, whether you show up or not." That was a conversation—Mr. Faulk was involved with that one as well. And they said very adamantly they did not want that done; absolutely not, for all of the reasons that I have said previously and have told you today—because of the panic, because of the concern, and also because it would have been noticed. It would have been a public proceeding. You would have had to prove the grounds at that proceeding. There was no emergency acquisition authority.

So unlike the Federal authority, they could go in, take the institution, transfer it, and immediately go in there without advance notice to management and take control.

Senator SARBANES. You couldn't do that?

Ms. SCHAFFER. We could have done it only after a court proceeding.

Senator SARBANES. That's right. You'd have had to go through court first in order to do that.

Ms. SCHAFFER. Right.

Senator SARBANES. So you would have had all the repercussions of a proceeding, court action, before that came about.

Ms. SCHAFFER. We discussed that in 1985, and they had lost their emergency acquisition authority for a period of time in 1985 under Garn-St Germain. They explored the idea of using State law in some cases. When they found out that Arkansas law did not provide for emergency acquisition authority, they weren't interested in that. We had those discussions throughout 1985 and 1986.

Senator SARBANES. Fine.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. So, to sum up, you saw problems in the bank; in that savings and loan and other savings and loans in the State because of the national problem of real estate loans going sour all over the country at this point, which triggered what became the S&L crisis.

In the earlier stages of that, the Federal regulators who would have the obligation of paying off under the Federal guarantees, under Federal insurance, were essentially pleading with you not to take any action that was not OKed by them, right?

Ms. SCHAFFER. That's right. Plus, during the same period of time, they had indicated that they were going to find merger partners for the institutions to have them bought by larger savings and loan institutions.

Mr. BEN-VENISTE. They were in the process of looking for other ways to try to soften what they saw coming down the road in terms of these failures.

Ms. SCHAFFER. If the savings and loan were bought by another savings and loan, and that savings and loan then got to use that purchase as good will, and they didn't have to ever recognize the losses then from the savings and loan that was bought, then you continued to postpone the recognition of the losses that we all know eventually were recognized.

Mr. BEN-VENISTE. One of the other things that the Federal regulators were proposing—and I'm referring to the Federal Home Loan Bank of Dallas' Supervisory Bulletin in 1985, Preferred Stock as Regulatory Net Worth—it is clear that under these circumstances that were afflicting S&L's throughout the country, one of the things that the Home Loan Bank Board was providing for or recommending was the issuance of preferred stock. Is that correct?

Ms. SCHAFFER. A lot has been made of the so-called effort to keep Madison Guaranty afloat. And the policy at the Federal level was to keep every institution afloat. The only way to keep them afloat legitimately is to raise capital against which losses can be booked, and continue to be able to have that capital in reserve to stay afloat. I mean, staying afloat has taken on a negative connotation.

But it was most certainly what they wanted to see happen in order to avoid closing them and making depositor payoffs.

Mr. BEN-VENISTE. This was one of the things they were recommending at this time as the crisis loomed larger on the horizon?

Ms. SCHAFFER. It was a mechanism for raising capital that they believed should be available to other institutions looking for ways—who couldn't go to the public markets—to raise capital.

Mr. BEN-VENISTE. Now, the question has been raised whether in Arkansas, at the time the request came from the Madison Bank, whether this was a novel question; meaning this was the first time that you were called upon to determine for a State-chartered S&L whether, in fact, preferred stock could be issued. Correct?

Ms. SCHAFFER. Correct.

Mr. BEN-VENISTE. When you did that research, you came to the conclusion that it could theoretically, but that there were requirements imposed by Federal regulations more stringent than Arkansas State regulations that would have to be complied with by Madison Guaranty Savings & Loan in order for them to be able to go forward with the issuance of preferred stock. Is that correct?

Ms. SCHAFFER. Yes. The instrument itself would have to have all those characteristics that Charles has mentioned, that you were mentioning before. Obviously, there would be no purpose in going forward, in issuing an instrument that would not be counted in their regulatory net worth. So, that would be something that was examined at the time they submitted the specific proposal.

Mr. BEN-VENISTE. In connection with Mr. Handley's responses earlier, Mr. Handley, let me direct your attention to the issue of how it came to pass that this was a novel question in 1985. Up until the 1980's, were State-chartered S&L's allowed to issue stock at all?

Mr. HANDLEY. Yes, ours were.

Mr. BEN-VENISTE. Was there a mutual versus stock regulation?

Mr. HANDLEY. We have both. They could be mutual associations or stock. Most of ours were stock.

Mr. BEN-VENISTE. The issues that are associated with the creation of a preferred class of stock were those which came on the horizon by reason of the extraordinary need to raise capital that was occasioned by the real estate crisis, in terms of the real estate market declining so substantially that the value of real estate loans dragged down the ability of the savings and loans to maintain the appropriate ratio of assets to capital. Correct?

Mr. HANDLEY. Yes. I think it was necessitated by the general bad financial conditions of S&L's in the State that the Federal Home Loan Bank proposed regulations and pushed the issuance of preferred stock to increase capital.

Mr. BEN-VENISTE. Isn't it correct that in about 1985, there are only about 15 State-chartered savings and loans in the whole State of Arkansas?

Mr. HANDLEY. That's right, we had about 14 or 15.

Mr. BEN-VENISTE. So the idea that this was the first, and yet there weren't later examples of preferred stock questions being raised, is in part a function of the small number of State-chartered savings and loans afloat at that time?

Mr. HANDLEY. Yes, and they decreased substantially since then.

Mr. BEN-VENISTE. The word "afloat" then begins to get modified as the crisis deepens, and then most of these institutions sank—is that correct—or were merged?

Mr. HANDLEY. Most were merged.

Mr. BEN-VENISTE. So that virtually very few remained in the years 1987 and so on.

Mr. HANDLEY. Yes, today we only have two State-chartered.

Mr. BEN-VENISTE. Today you're down to two State-chartered savings and loans in Arkansas, which in part I think puts into context the response to the question about whether it was novel, and how many other institutions were seeking the same kind of consideration in the State of Arkansas. But, at the end of the day, the requirements that you applied to Madison's desire to issue preferred stock were not met by Madison, correct?

Mr. HANDLEY. That's right.

Mr. BEN-VENISTE. You gave them a limited time period to come up and meet those requirements, correct?

Mr. HANDLEY. Yes.

Mr. BEN-VENISTE. No one pressured you, if I understand it, to relax those requirements on behalf of Madison. Is that correct?

Mr. HANDLEY. That's correct.

Mr. BEN-VENISTE. Then they failed to meet the requirements within the designated period. They never even submitted an application, did they?

Mr. HANDLEY. That's right.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

I'm just going to sum up with a few more questions myself on this issue of the Federal policy.

Mr. Handley, the Federal policy here was a general Federal policy to encourage banks to issue preferred stock nationally, so that they could get more capital in and firm up their financial support. Right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. But every State has its own laws that regulate and control the manner in which stock can be issued, and tells you whether or not within a given State stock can be issued in preferred form for a savings and loan. Right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. And your responsibility was to make sure that whatever the Federal policy was, that what was done in Arkansas met State law. Correct?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Did you call up the Federal Home Loan Bank Board to get an opinion from them on this unprecedented issue, whether under Arkansas law—

Mr. HANDLEY. No, because I was going to make one of the conditions when they filed the specific ones, that they had to meet the conditions of the Federal people.

Mr. CHERTOFF. On the legal question of whether under Arkansas law, preferred stock could be issued by an institution like Madison, did you solicit the advice of the Federal regulators about a question of Arkansas law?

Mr. HANDLEY. No, I didn't think I needed to.

Mr. CHERTOFF. Because whatever the Federal policy is, the question of Arkansas State law was a separate, independent issue that the Securities Department had to pass on as a matter of the State's authority. Right?

Mr. HANDLEY. Yes, its general application.

Mr. CHERTOFF. Now, you first heard about this from someone at the savings and loan itself, who gave you a call and had a discussion with you about this in April, right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Then you got back to them and you said, "We need a formal submission, something in writing with documentation in it and argument, and then we'll consider it." Right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. You got that on April 30th, when you had the letter from the Rose Law Firm addressed to you, right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. We have seen other documents that indicate that you sent a memo to Ms. Schaffer and to Nancy Jones, attached a copy of the April 30th letter—it's dated May 6th—and you set forth your analysis and your understanding of the issue, right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. This is RLF 13185. We are going to put it up. I don't know if you have seen this yet. It ties right in to what the Chairman was asking you a few minutes ago about exactly the way in which this was handled. You are not a lawyer, Mr. Handley, right?

Mr. HANDLEY. No.

Mr. CHERTOFF. We're going to make sure you get a copy of this. It's from Charles. You are Charles?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. It's your handwriting?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. The letter that's attached of April 30th you know to be the Rose Law Firm letter to you that sets forth the argument in favor of doing this under Arkansas law?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. It's dated May 6th.

Mr. HANDLEY. Yes.

Mr. CHERTOFF. You say in the letter, "Perhaps one of our attorneys should review the matter and issue a legal opinion regarding such, and advise the Rose Firm and Madison." Right?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. That was your position on May 6th?

Mr. HANDLEY. Yes.

Mr. CHERTOFF. Now, Mr. Brady, you also had a position after April 30th, after this letter from the Rose Law Firm was received, that the Attorney General's office ought to issue a legal opinion, if that right?

Mr. BRADY. Yes, sir.

Mr. CHERTOFF. We don't have that memo, but you remember that was your position, right?

Mr. BRADY. Yes, sir.

Mr. CHERTOFF. And Ms. Jones in her memo, also dated May 6, 1985, raises a further question on item number 3 about the problem not addressed by the Rose Firm is the non-voting portion of the stock, which is what makes it preferred.

So may I ask you, Ms. Schaffer, whether you believe you got the note from Mr. Handley that's addressed to you and Nancy?

Ms. SCHAFFER. I'm sure I did. This is why I talked to him.

Mr. CHERTOFF. And you must have gotten the note from Nancy in which she indicated on May 6th what her views were, right?

Ms. SCHAFFER. Right.

Mr. CHERTOFF. So the state of play, as I understand it on May 6, which is 7 days after the April 30th letter was received, is that Mr. Handley, you have committed to writing the fact that there should be an attorney opinion on this. You're not an attorney. Mr. Brady, you have expressed the opinion that the Attorney General ought to offer an opinion on this novel issue. You are an attorney. And Ms. Jones, who's not an attorney, indicates there's a further problem that's not addressed by the Rose Firm.

Now, what is interesting about all of this—and there's nothing wrong with having debate like this—is that April 30th is when the first documentation comes in. As of May 6th, you, Mr. Brady, and you, Mr. Handley, are saying we need separate attorney opinions. On May 14th, however, without getting an opinion from the Attorney General, and without getting an unqualified opinion from Mr. Brady, Ms. Schaffer, you send out a letter saying that you agree with the analysis.

But most interesting of all is your conversation with Hillary Clinton in which, as you have testified, you expressed to her that you were comfortable with this concept, didn't come on May 14th. It didn't come on May 6th. It didn't even come on April 30th. It came on April 29th, because we know that from the indisputable billing records.

Ms. SCHAFFER. Well——

Mr. CHERTOFF. Let me finish, Ms. Schaffer, and then you can comment.

So, Mr. Handley, while you were saying on May 6th we needed an attorney review; Mr. Brady, while you were saying in early May we need to have an Attorney General review; while Ms. Jones was trying to figure out what's going on on May 6th—even before the April 30th letter had come, Ms. Schaffer, you had had the conversation on April 29th with Mrs. Clinton, in which you indicated that you had reached a comfort level with the views that this was OK as a first step. I understand it wasn't a completed issue, but this was OK as a first step.

Now, I just want to make sure that we don't have another phone call in here, Ms. Schaffer. You have testified at length that you had one conversation with Hillary Clinton, right?

Ms. SCHAFFER. If the billing records are indisputable, as far as I know. I don't agree that they are, but——

Mr. CHERTOFF. You think they're disputable?

Ms. SCHAFFER. I don't know that the billing records are indisputable. I'm saying I'm willing to accept that may have occurred on that date. I don't know.

Mr. CHERTOFF. But you know you had one conversation with her.

Ms. SCHAFFER. If the billing records are indisputable, and it only shows one conversation, then there's one conversation.

Mr. CHERTOFF. You only testified about one conversation, and you were asked earlier today how many conversations, and you said repeatedly one conversation.

Ms. SCHAFFER. Is there a question?

Mr. CHERTOFF. My question to you is, would you agree with me that your conversation occurred on April 29th, and that your conversation with Mrs. Clinton, in which you expressed the comfort level, preceded all of this analysis and all of this discussion of Mr. Handley saying you need a legal opinion, Mr. Brady saying you need a legal opinion—but even before they'd gotten the letter from the Rose Law Firm, you had already had the conversation with Mrs. Clinton and said you had a comfort level?

Ms. SCHAFFER. I've already testified about that today, but I'll be happy to go over it again.

I told you that this question had already been circulating through the department, had already been discussed at least as early as April 3rd. I also told you that I am not sure that conversation occurred on that day. It may have. But that I was perfectly capable of looking at the issue and deciding for myself.

However, after the letter came in, Charles did look at it again. Bill looked at it. Nancy looked at it. If I was going to write the letter, despite what anybody said, I should have written it the next day, May 1st, it looks like to me. I did not say, "You are going to get a letter that says this." I said, "I'm generally comfortable with the concept. I'm comfortable with the concept." That's why there was no more discussion probably than that. Who knows?

But in any event, it's unfair to characterize this as nobody having an opportunity to discuss it, nobody discussing it. We did discuss it. Charles has said that initially he had some concerns. He has said he did not, after discussing it—Nancy Jones immediately agreed. Her only question has to do with the non-voting portion, which was something that would come up at the time we examined the specific proposal and looked at the form of the instrument. That is not something that would change her general expression, "I agree with the Rose Law Firm."

That's right. She was not an attorney. She had the most experience in these matters with the department, and those are the only people I had, Mr. Chertoff. I had to be responsible for this decision.

The reason why you have staff attorneys is to do that, not to go get an Attorney General's opinion. I should have been able to rely on the staff lawyer to do something like that. Every decision? You send it over to the Attorney General, to tell you what to do? That's something you need to decide for yourself. You ought to be able to interpret your own laws.

In rare instances—in rare instances—you may seek an Attorney General's opinion, but not in something like this. Not at all. It was totally unnecessary.

The CHAIRMAN. Why do you say, "Not with something like this"? You see, Ms. Schaffer, if this had been a matter that was just routine—

Ms. SCHAFFER. It was routine.

The CHAIRMAN. You say this matter was routine?

Ms. SCHAFFER. I am saying that we frequently got letters from lawyers asking us to take a position or interpret the statute one way or another, or generally agree with the concept. I couldn't send every one of those to the Attorney General.

The CHAIRMAN. It related to the issuance of preferred stock by a State-chartered institution, this was the first time that your Securities Department, since 1969, had ever received this request. That's the testimony of Mr. Handley, is that correct?

Mr. HANDLEY. This is the first request that we received.

The CHAIRMAN. Yes. And you were there since 1969?

Mr. HANDLEY. Yes.

The CHAIRMAN. This wasn't routine, was it?

Ms. SCHAFFER. Just because—

The CHAIRMAN. Let me just finish. Was this routine?

Mr. HANDLEY. It was the first request. It was different.

The CHAIRMAN. Mr. Brady, did you find this to be a novel question? Is that why you thought the Attorney General should review this?

Mr. BRADY. I thought that it was shaky enough that, to protect the Commissioner, we ought to get the Attorney General to sign off on it, if he would.

The CHAIRMAN. And you indicated that to the Commissioner, is that correct?

Mr. BRADY. Yes.

The CHAIRMAN. Commissioner, even those people, if you want to interpret their decisions—Ms. Jones, or Mrs. Jones, and I look at the letter of 5/6/85. I mean, there are questions that she raises. And notwithstanding that—well, I guess 8 days thereafter, you send out this letter saying, "Go to it."

Ms. SCHAFFER. That's not what it says.

The CHAIRMAN. Well, the letter speaks for itself.

Ms. SCHAFFER. It does.

The CHAIRMAN. The letter does indicate that there's no question legally as it relates to an institution being able to go forward with the issuance of preferred stock. And I just think that it is absolutely not the case that this was a routine endeavor. It had never been done before. Indeed, I suggest that's why the Rose Law Firm was brought into this case.

Indeed, let me suggest that's why I think people can come to the conclusion that Mrs. Clinton—she had never called you before on a matter, but she called you on this matter.

Ms. SCHAFFER. Did I testify that she'd never called me before—

The CHAIRMAN. Before on a matter?

Ms. SCHAFFER. —on any matter?

The CHAIRMAN. No. I didn't say "any matter." Did she ever call you before on a matter?

Ms. SCHAFFER. She hadn't called me before. But she called me in 1987, and asked me who in the department handled mortgage loan company applications.

The CHAIRMAN. But here she called you on a specific matter. And this is the first time the Commission ever had that. Isn't that true?

Ms. SCHAFFER. The first time you get a question does not mean that it's unusual or unique. I mean, we got a lot of those. We had

never closed a State-chartered savings and loan before, either, and we had to make that decision.

The CHAIRMAN. So there was another occasion that Mrs. Clinton called you?

Ms. SCHAFFER. Some time in 1987.

The CHAIRMAN. What was that with regard to?

Ms. SCHAFFER. To ask who in our department handled mortgage loan companies. Who should the questions be directed to in the department, mortgage loan companies.

The CHAIRMAN. I want to thank you for your testimony.

Again, I point out that we've been given to believe by others who have testified that this was some kind of routine matter, and that this was not new and not novel. Indeed, that is just the Chairman's observation—that is not borne out by the record; by Mr. Handley, who has been there for years, by Mr. Brady, and even by yourself.

Senator Sarbanes has some questions.

Senator SARBANES. Now, Ms. Schaffer, I want to address that very point.

My understanding, when you in a sense made reference that this was routine, is that it's routine for the department to get inquiries from lawyers requiring the department to interpret the law which the department administers.

Ms. SCHAFFER. Right, all the time. We can't send those—we have to make those decisions and live with them. I mean, that is our job—and be able to defend them. They have to be right. It doesn't matter if you have another person in the office who is a lawyer to give it to. The decision has to be right.

Senator SARBANES. So this is the first time this particular issue came up?

Ms. SCHAFFER. Right.

Senator SARBANES. But this was not the first time, or the last time, that you were called upon to interpret the statutes that you are required to administer. Is that correct?

Ms. SCHAFFER. That was an integral part of our job almost on a daily basis.

Senator SARBANES. If you referred all of those inquiries for initial interpretations of the statute over to the Attorney General's office, you wouldn't have been doing a good part of your work, would you?

Ms. SCHAFFER. Not only that, but the Attorney General's office didn't have the expertise in these sorts of laws, regulatory areas. That's not the kind of thing you—that was our job.

Senator SARBANES. That's right.

Ms. SCHAFFER. We were supposed to make that decision and take the heat.

Senator SARBANES. Mr. Brady, someone might have said to you, "Why do you keep referring these things over to the Attorney General? Why don't you all sort of decide them?"

Mr. BRADY. In my experience, this was the only time that I had ever suggested that.

Senator SARBANES. Ms. Jones said to you, I take it, in her memo, "I believe the Rose Firm's analysis regarding ordinary business corporations is correct." Is that right?

Ms. SCHAFFER. That's correct. And a lot has been made of the fact she was not a lawyer, but we did the best we could with the collective knowledge that we had.

Senator SARBANES. Now, the question she raises in number 3 on the non-voting portion is an issue that would be addressed, if necessary, when a specific proposal was submitted to the department, would it not?

Ms. SCHAFFER. Right. I think that was just—Nancy was just giving me the benefit of her advance look at this, that we needed to be on the alert to look at that. That was something that we needed to address, not in this response, but that it was an issue.

She told me what she thought—and that's what I wanted her to do, and that's what I wanted Charles to do, raise these questions. They need to be addressed, not necessarily now.

Senator SARBANES. I don't have anything further.

The CHAIRMAN. Do you have anything?

Mr. CHERTOFF. Yes.

The CHAIRMAN. Go ahead. Let's wrap it up.

Mr. CHERTOFF. I have to just ask this last question with respect to this issue. Mr. Brady, you said this was the only time you ever suggested that something be referred over to the Attorney General's office for an opinion. Is that correct?

Mr. BRADY. I believe it's the only time I suggested that as a possible approach to mediating conflict of opinions.

Mr. CHERTOFF. Was it your impression that Ms. Schaffer was dissatisfied with the response you gave her on this matter?

Mr. BRADY. I will leave it to the Committee. You just heard from Ms. Schaffer.

Mr. CHERTOFF. Were you dissatisfied with his response on this matter?

Ms. SCHAFFER. I was not dissatisfied with the fact the response was, "We don't agree." I was dissatisfied with the reasoning, with the analysis. If the analysis is as Bill has described it today on the basis of an insurance regulation of some nature at some point in time, I did not see that that had anything to do with the Arkansas Business Corporation Code and the Savings and Loan Association Act. To me, the analysis on that basis—and we don't have the memo in front of us, if there was one to that effect—but he has said that was his analysis. I can see why I would have rejected that. It had no place in this particular analysis as far as I was concerned.

I didn't have another lawyer in the office. It was me. I was it. I had to sign off on it, make the decision, live with it, defend it. I would not ask Bill to do that on a decision in which he was not comfortable. I wouldn't want my name on that. That is why I wouldn't put my name on what he suggested. I wouldn't make him put his name on mine.

Mr. CHERTOFF. And time was of the essence on this, wasn't it?

Ms. SCHAFFER. No, it was not.

Mr. CHERTOFF. Nothing further.

The CHAIRMAN. Senator Sarbanes.

[No response.]

The CHAIRMAN. I want to thank all the witnesses. It has been a long day. Thank you for your cooperation and for your testimony.

Ms. Schaffer, notwithstanding that this has been not an easy time for you, I want to thank you for your candor. I think it was refreshing, and I want to thank you for that. The same with you, Mr. Brady, and Charles. So thank you all.

Senator SARBANES. Could I just make two comments, Mr. Chairman?

The CHAIRMAN. Certainly.

Senator SARBANES. Ms. Schaffer, there was some questioning put to you on the other side that in effect said that you got the appointment because your brother was the Governor's friend. Other questioning tried to make a lot out of a McDougal note. I would like to suggest, as we close, that maybe the Governor made the appointment because he thought you'd do a good job as Commissioner.

Ms. SCHAFFER. Thank you.

Senator SARBANES. Mr. Chairman, I would like to ask what the schedule's going to be for next week; and also when we will meet in order to review the schedule more broadly, and the deposition schedule, and get a stronger, clearer sense of what the work program is?

The CHAIRMAN. I think there is a fairly clear schedule. It seems to me that our attorneys have agreed to a schedule of witnesses for Tuesday and Wednesday, and they are waiting to confirm the availability of witnesses for Thursday.

So we are going forward on Tuesday, Wednesday, and Thursday, and we will identify as soon as we can the schedule of other hearings. I will ask staff to continue to coordinate with the Minority. Hopefully, we can have even a more definitive schedule.

Senator SARBANES. I have looked at what's proposed. It seems to me what's proposed for Tuesday and Wednesday could be done easily in 1 day. We ought to meet and discuss that.

The CHAIRMAN. It is now 20 minutes to 5, and the Senator knows I have always kept myself available, and am willing to work together. I note that we started a little after 10 a.m. With the exception of some short 10-minute recesses, with no lunch, we have moved forward. This Chair does not intend to slow things down. But I will suggest that we have some concerns relating to the normal needs of the Senators, staff, et cetera.

Now, this has been a grueling day for the three witnesses, especially Ms. Schaffer, as well as us. So we are going to continue to move the process forward and put in as much time as we humanly can. We can't work around the clock everyday, because we also must take depositions and accommodate the schedules of witnesses and their counsels.

I will be happy to discuss this, but I'm going to be quite candid. We're going to go into recess until next Tuesday at 10 a.m., and hopefully tomorrow we can iron out our schedule.

We stand in recess until Tuesday at 10 o'clock.

[Whereupon, at 4:40 p.m., the Committee was recessed, to reconvene at 10 a.m. on Tuesday, January 30, 1996.]

[Appendix supplied for the record follows:]

7/2/86



Sam -

Madison Guaranty is in pretty serious trouble. Because of Bill's relationship w/ McDougal, we probably ought to talk about it. The meeting referred to in the attached letter has been moved up to July 11, 1986 and the FHLBB has asked me to be ~~at~~ at the meeting.

Please note that while all of the FHLBB restrictions in the letter are serious, #5 & 6 effectively put Madison out of business.

Thank you for your support.

BEVERLY BASSETT
Securities Commissioner

DB

CC:HW 884.



FEDERAL HOME LOAN BANK OF DALLAS

OFFICE OF THE CHIEF CREDIT OFFICER

June 19, 1986

FHL30 No. 7601

Board of Directors
 Madison Guaranty Savings and Loan
 Association
 P. O. Box 1583
 16th and Main Streets
 Augusta, Arkansas 72203

Dear Board Members:

An examination of Madison Guaranty's financial condition and operating practices is currently being conducted by examiners representing the Federal Home Loan Bank Board. This examination is not yet complete. However, it has already disclosed matters of serious supervisory concern including unsafe and unsound practices, instances of noncompliance with the July 19, 1984 Supervisory Agreement and regulatory violations. Accordingly, we are scheduling a board of directors meeting for July 24, 1986 at 1:00 p.m. to be held at the Federal Home Loan Bank of Dallas, 500 East John Carpenter Freeway.

Furthermore, as a result of this office's ongoing monitoring of Madison Guaranty, we have noted your association's continued failure to comply with the minimum net worth requirement of Section 563.13 of the Insurance Regulations. At April 30, 1986, your association's regulatory net worth totaled \$2.5 million, some \$1.65 million short of its minimum requirement.

As you know, the July 19, 1984 Supervisory Agreement by and between this office and your association requires you to take actions to effect Madison Guaranty's compliance with the net worth requirement of Insurance Regulation 563.13. However, during 1985, Madison Guaranty's liabilities grew 120% from \$48 million to \$105.8 million. In the first four months of 1986, liabilities grew 25% (annualized) to \$115 million. This recent growth by your association appears totally contradictory to your July 19, 1984 commitment to bring Madison Guaranty into net worth compliance.

As a result of the seriousness of the preliminary results of the examination in progress at your institution, we find it necessary to take immediate supervisory action. Accordingly, pursuant to Insurance Regulations 563.13(d), we hereby direct you to take the following corrective actions until the aforementioned meeting is held and/or you receive further notice from this office:

CCBW-885.

Madison Guaranty Savings and Loan
Association
Augusta, Arkansas
June 19, 1986
Page 2

CCBW-886.

- 1) The association shall upon receipt of this letter immediately adjust its savings rates to ensure that the rates it pays to attract savings deposits are not in excess of the rates paid on comparable deposits by competing institutions in the same market. Furthermore, until the July 24, 1986 meeting, the association shall immediately reduce its growth to ensure that it will not increase its liabilities in an amount that is in excess of the amount of interest credited on savings accounts and the amount necessary to fund any loans-in-process obligations or legally binding commitments existing as of the date of this letter.
- 2) Madison Guaranty shall comply fully with the restrictions and requirements of Insurance Regulation 563.9-8. Accordingly, among other things, the association may not make any additional "direct investments", as that term is defined in Section 563.9-3(b)(1) of the Insurance Regulations, without the prior written approval of this office.
- 3) The association, and its wholly owned subsidiary, shall immediately terminate the incentive compensation plans currently in effect for Messrs. McDougal and Henley, whereby they receive 10% of the net income generated by Madison Financial Corporation and Madison Guaranty, respectively. In addition, the compensation paid to these two individuals shall be immediately adjusted to a level commensurate to the compensation paid to officers with similar duties and responsibilities, who are employed by entities similar in size and operating practices to Madison Guaranty.
- 4) The association or any of its subsidiaries shall not make or commit to make, purchase or commit to purchase, all or any part of a loan secured by real estate, until and unless the following conditions have been met:
 - a) the documentation requirements of Section 563.17-1(c) of the Insurance Regulations are fully satisfied;
 - b) the appraisal report obtained is in compliance with requirements and guidelines of Memorandum 2-41b; and
 - c) the loan has a loan-to-value ratio of 90% or less based upon the lower of either the security property's sales price or its appraised value.
- 5) ~~Madison Guaranty, or any of its subsidiaries, shall not finance any additional sales of real estate owned by the association or any of its subsidiaries, save for sales closed pursuant to legally binding commitments to provide such financing in existence at the date of this letter.~~
- 6) ~~The association shall not, and shall not allow any of its subsidiaries, to transact business with any of the following named companies except for business transacted pursuant to contractual arrangements existing at the date of this letter. Furthermore, this office must be notified in~~

Madison Guaranty Savings and Loan
 Association
 Augusta, Arkansas
 June 19, 1986
 Page 3

writing prior to any payment of \$1000 or more by Madison Guaranty or any of its subsidiaries to any of the following companies pursuant to such a contractual arrangement. The companies are as follows:

- 1) Castle Sewer and Water Company
- 2) Castle Industries, Inc.
- 3) The Wilson Co., Inc.
- 4) Hoc Stuff, Inc.
- 5) Abernathy Development
- 6) Sorenson Enterprise
- 7) Madison Marketing
- 8) Madison Real Estate
- 9) Designer Construction
- 10) Industrial Development Company of Little Rock (IDC)
- 11) Industrial Services Co. (ISC)
- 12) Madison Properties, Inc.
- 13) Dixie Continental Leasing, Inc.
- 14) Aunspaugh Designs
- 15) Master Developers, Inc.
- 16) Island Construction

If you have any questions regarding this letter or the July 24, 1986 meeting, please feel free to contact Chip G. Kieseewetter or myself at (214) 659-8500.

Very truly yours,

Walter H. Faulk
 Supervisory Agent

WHF:CK:jc

bcc: ADRO-DES
 Examinations

CCDW-887.

July 14, 1986

HAND-DELIVERED

Mr. Jim McDougal
 Mr. John Latham
 MADISON GUARANTY SAVINGS & LOAN
 15th and Main Streets
 Little Rock, AR 72203

Dear Jim and John:

When you requested the Rose Law Firm to represent Madison on a specific matter in April, 1985, I advised you that the firm would credit fees against a monthly retainer and then bill for whatever fees might be in excess of the retainer at the end of each month. Since that time, Madison has run a credit in its account at the end of every month.

We are also aware that since that time Madison has been relying and continues to rely on a number of other law firms to provide ongoing representation, and that our representation has been for isolated matters and has not been continuous or significant.

You currently have a credit with the Rose Law Firm of \$4,622.53. I am, therefore, returning the enclosed check our firm received for \$2,000.00 as an advance against legal fees for the month of July, 1986, and a check for the retainer credit in the amount of \$4,622.53.

RLF2 03062

DKSN001168

Mr. Jim McDougal
 Mr. John Latham
 July 14, 1936
 Page Two

We do not believe it appropriate for us to take a pre-payment of legal fees when there is only one matter we are representing Madison on, namely the negotiations with Savers over the Babcock and Econolodge loan participations. If you would like us to work on another specific matter, we would be glad to discuss it on a case-by-case basis.

Sincerely yours,

For the Rose Law Firm
 HILLARY RODHAM CLINTON

ERC:sjc

Enclosures: Original checks to John Latham
 Copies of letter and checks to Jim McDougal

cc: Mr. Vince Foster
 Mr. Herb Rule

RLF2 03063

DKSN001169

67TH STORY of Level 2 printed in FULL format.

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The American Banker

November 4, 1985, Monday

SECTION: PLAYING BY THE RULES; Pull Out and Save; Thrift Update; Required Reading; Pg. 28

LENGTH: 8250 words

HEADLINE: Implications for Soundness

BYLINE: By Constance R. Dunham; Constance R. Dunham is a financial economist at the Federal Reserve Bank in Boston.

HIGHLIGHT:

Conversion from mutual to stock ownership is a complex process.

BODY:

THE CAPITALIZATION of the thrift industry gradually declined during the 1970s and early 1980s. Only in the past year has the slide in the industry's average capital-to-asset ratio been halted, and the capital bases of many thrifts still remain too thin. . . .

While regulators have raised required capital-to-asset ratios for commercial banks, they have treated the more severely damaged thrifts gingerly and have introduced several programs to give them additional time for recovery.

In response to the concern over their soundness, thrifts, like banks, have employed a variety of methods to improve capitalization, including increasing their retained earnings, issuing new common and preferred stock, and instituting new forms of long-term debt. One additional method, employed exclusively in the thrift industry, is conversion from mutual to stock ownership.

A mutual-to-stock conversion by a thrift changes the ownership structure of the institution from one mutually owned by all current depositors, who tend to be local customers, to one owned by equity shareholders, who may not be customers at all and who may live in distant parts of the country.

Although the conversion procedure has been discussed since at least the 1930s, it rarely was used before 1950, and for most of the period between 1955 and 1980 it was hampered by state and federal prohibitions, court challenges, and tax status uncertainties.

Most of these issues were resolved by 1980. Since then, more than 200 thrift institution conversions have been completed. While only 21% of thrift assets were held by stock thrifts in 1975, that figure grew to 40% by the end of 1983.

That was a record year for thrift conversions. In 1983, converting savings and loan associations raised \$2.7 billion in new capital, an amount equal to 9% of the book net worth of all S&Ls combined. In part, this unprecedented volume was due to the conversion of some very large thrifts; the three largest together



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MESSAGE

☒ TELEPHONED☒ PLEASE CALL☐ URGENT☐ CAME BY☐ WILL CALL AGAIN☐ WANTS TO SEE YOU☒ RETURNED YOUR CALL

FOR

MR

OF

PHONE

HOME

PHONE

TIME DESCLINE

REFERENCE

REFERRED TO

DATE

TIME

SIGNED

DKSN026305

F
file

May 14, 1985

Hillary Rodden Clinton
Rose Law Firm
120 East Fourth Street
Little Rock, AR 72201

RE: Authorization and Issuance of a Class of Preferred Stock by
Madison Guaranty ("Madison"), a Savings and Loan Association
chartered under the Laws of the State of Arkansas

Dear Hillary:

I have reviewed your letter of April 30, 1985, regarding the proposed authorization and issuance by Madison of a class of non-voting preferred stock.

I agree with your analysis and conclusion of the question whether in Arkansas chartered savings and loan association may under Arkansas law create, authorize and issue a class of preferred stock. Arkansas law expressly gives state chartered associations all the powers given regular business corporations under the Arkansas Business Corporation Act, including the power to authorize and issue preferred capital stock. Further, there is no express prohibition against such action contained in the Arkansas laws governing building and loan and savings and loan associations. Accordingly, as the Savings and Loan Supervisor, I concur in your opinion that Madison's proposed capitalization plan is not inconsistent with Arkansas law.

Very truly yours,

SEVERLY BASSETT
Savings & Loan Supervisor

BB/ps

0000084

RLP1 02134

5000238

ARKANSAS



SECURITIES DEPARTMENT

71 CAPITOL MALL — 48-205

LITTLE ROCK, ARKANSAS 72201

TELEPHONE 501-571-1011

May 14, 1963

William Rodham Clinton
Rose Law Firm
120 East Fourth Street
Little Rock, AR 72201

RE: Authorization and Issuance of a Class of Preferred Stock by
Madison Guaranty ("Madison"), a Savings and Loan Association
chartered under the laws of the State of Arkansas

Dear William:

I have reviewed your letter of April 10, 1963, regarding the proposed authorization and issuance by Madison of a class of non-voting preferred stock.

I agree with your analysis and conclusion of the question whether an Arkansas chartered savings and loan association may under Arkansas law create, authorize and issue a class of preferred stock. Arkansas law expressly gives state chartered associations all the powers given regular business corporations under the Arkansas Business Corporation Act, including the power to authorize and issue preferred capital stock. Further, there is no express prohibition against such action contained in the Arkansas laws governing building and loan and savings and loan associations. Accordingly, as the Savings and Loan Supervisor, I concur in your opinion that Madison's proposed capitalization plan is not inconsistent with Arkansas law.

Very truly yours,

Severly Bissett

SEVERLY BISSETT
Savings & Loan Supervisor

SB/rs

COPY

RECEIVE

MAY 15 1963

ROSE LAW FIRM

A PROFESSIONAL ASSOCIATION

ATTORNEYS

150 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201
TELEPHONE 1-501-375-0101
TELECOM 1-501-375-1200

U. S. DEPT.
OF JUSTICE

May 23, 1985

WILLIAM C. ROSE
W. BRUCE SLAY
C. JAMES SMITH, JR.
ROBERT L. CAMPBELL
ROBERT E. PAUL, III
STANLEY E. PRICE
R. WATY GREGORY, III
W. WILSON JONES
WILEY FOSTER, JR.
WESTER L. HUBBELL
ALLEN W. BIRD
WILLIAM C. BISHOP
WILLIAM ROBERT CLINTON
C. BRADLEY DAVIS
THOMAS
W. JAMES BREWSTER
WILLIAM W. BREWSTER, III
KENNETH B. BREWSTER
DAVID A. BREWSTER
HOWARD W. CLARK

CHARLES J. BREWSTER
JERRY E. JONES
THOMAS A. TROTT
CAROL S. JONES
JAMESON FLETCHER, JR.
LEE S. BAKER
JIM HUNTER BROWN
R. DAVID THOMAS, JR.
DAVID L. WILLIAMS
CATHERINE L. BRYCE
ROBERT T. BOWMAN
MICHAEL R. JONES
DAVID E. THOMAS
DANIEL RALSTON, III
HOWARD W. WARE
GARY A. BREWSTER
J. GASTON WILLIAMS
CHARLES W. BAKER
OF COUNSEL

Mr. Jim McDougal
MADISON GUARANTY SAVINGS & LOAN
16th & Main Streets
Little Rock, AR 72206

Dear Jim:

Enclosed is a letter for your files from Beverly Bassett, approving the proposed authorization and issuance of a class of non-voting preferred stock. We appreciate the opportunity to work for you and look forward to continuing success in resolving whatever questions arise as you pursue your plan for growth.

With best regards, I am

Sincerely yours,

William C. Rose
WILLIAM C. ROSE
ROBERT CLINTON

jkf
enclosure
cc: w/enclosure:
Mr. John Latham
Mr. Rick Massey

ARKANSAS



SECURITIES DEPARTMENT
HERITAGE WEST BUILDING, THIRD FLOOR
201 EAST MARKHAM
LITTLE ROCK, ARKANSAS 72201

TELEPHONE 501-371-1011

December 9, 1985

Mr. Richard N. Massey
Rose Law Firm
120 East Fourth Street
Little Rock, Arkansas 72201

Re: Madison Guaranty Savings & Loan Association ("Madison")

Dear Mr. Massey:

Please advise the Department of the progress and current status of Madison's \$3 million preferred stock issue and steps taken to meet the Federal Home Loan Bank Board's minimum net worth requirement. Since the Department has not yet received a filing for the preferred stock issue, we are concerned about the ability of Madison to complete the sale of such stock and meet the minimum net worth requirements of the Bank Board by December 31, 1985, as earlier agreed.

Thank you .

Cordially,

BEVERLY BASSETT
Savings & Loan Supervisor

Charles

BY: CHARLES P. HANDLEY
Financial Examiner Supervisor

CFH/Yag

SUP/MON/MEE

TO: File

FROM: John Mitchell

DATE: April 3, 1985

SUBJECT: Madison Guaranty S&LA ("Madison")
 Little Rock, Arkansas
 FHLBB No. 7601

At the request of Madison's management, a meeting was held today at 1:00 p.m. in the Pueblo Room, FHLB of Dallas. Attending were: John Latham, CEO; Greg Young, CFO; Sarah Worsham-Hawkins, Sr. V.P.; Jim Smith, Supervisory Agent; John Mitchell, Supervisory Analyst; Anna Mullican, Supervisory Analyst; and Jim Boggs, Supervisory Analyst. The purpose of the meeting was for Madison's management to become acquainted with regulatory personnel and to discuss the business plan previously submitted by Madison.

The SA indicated general satisfaction with Madison's business plan as well as corrections and improvements following the last examination report except that the rapid growth has not been accompanied by proportionate increases in Net Worth. Madison's business plan reflects projected total assets at December 31, 1985 of \$100 million which would be 108 percent annual growth over the fiscal year. Projected net worth is \$1.5 million which is only 1.5 percent of total assets and insufficient to meet the minimum net worth requirement. The institution has grown at an annualized rate of 192 percent through the first two months of 1985. The SA advised that, without adequate net worth, the growth would have to be curtailed. Ms. Hawkins stated that, under the new regulation, the estimated net worth requirement at March 31 would be \$1.12 million, and net worth would be about \$300,000 short of meeting that requirement. The Association plans to issue \$600,000 of preferred stock for which a buyer is awaiting issuance, and a second issue of an unknown amount will follow shortly thereafter. The business plan projects total assets at \$148 million at December 31, 1987, and management professes concern for its net worth position and an intent to meet all regulatory requirements.

A discussion was had regarding Madison's service corporation development projects, with which we have a reasonable comfort level. The service corporation, Madison Financial Corporation, is run by Jim McDougal, who owns 84 percent of Madison. Development has involved purchase of relatively cheap raw land and development into lots or tracts (1-5 acre) suitable for building. Madison has financed lot sales, but has not become involved in any commercial construction loans incident to any developments. The projects are:

- (1) Maple Creek - A highly successful residential development just southeast of Little Rock. Initial phases are sold out, with later phases over 70 percent sold.
- (2) Gold Mine Springs - A development in rural north central Arkansas. Within the last two weeks, this project is almost sold out; what has not been sold will be sold to a limited partnership.

032901

1018026

Memo to File
April 4, 1985
Page 2

- (3) Green Tree Farms and Fair Oaks - two projects of 50-55 tracts of 4-5 acres each in Camden, Arkansas. Green Tree Farms is completely sold, and Fair Oaks is over 70 percent sold in 4 months.
- (4) Campobello Island - A residential tract development in Nova Scotia. Sales have at least equalled Madison's investment in this project. Madison has only a one-fourth interest in this project by virtue of its one-half interest in a joint venture comprised of two limited partnerships. After the return of investment, some 3400 acres remain which can be developed. Madison is not obligated to be a lender or participant in further development, though it may choose to later participate. One acre tracts have been developed for summer homes, with plans by the joint venturers to later build a hotel, marina, etc.

The SA advised that Madison's growth, investment strategy and net worth compliance would be monitored closely. Though the institution was profitable (\$104,000) in 1984 and shows a \$128,400 profit for the first 2 months of fiscal year 1985, the SA advised that growth would have to be accompanied by adequate capital.

JHM:mm

bcc: ADRO/OES
DD/OES
State

Document Name: 3420

032902

1018027

MEMORANDUM

April 18, 1985

TO: John Latham
 FROM: Jim McDougal

I want this preferred stock matter cleared up immediately as I need to go to Washington to sell stock.

JM/ss

WHILE YOU WERE AWAY

NAME	J. McD	DATE	4-18	TIME	8:48
TO	John Latham	FROM	Jim McDougal	RECEIVED	
PHONE	376-0069	EXTENSION		RECEIVED	
MESSAGE	Concerning profit on Annie Mae.				
Take profit if you need money.					
J. M. C.					

| MG 000086J |

S-KCR03131

BOARD OF DIRECTORS MEETING AT THE FEDERAL HOME
LOAN BANK OF DALLAS, JULY 11, 1986, 10:00 A.M.

Attending: Rolf Coburn, Beverly Bassett, Board of Directors
of Madison Guaranty, Walter Faulk, Charles
Hanley, Bob Young, Larry Staton, Karen Bruton,
Chip Kiesweter, Jim Clark, two assistant
examiners, John Selig, and Breck Speed

Faulk:

There will be a cease and desist order. There might
be room for a little bit of negotiation, but he didn't see
much room for change. He said the institution will change
today.

Faulk identifies business problems:

- (1) Net worth of institution is \$1.6 million short
of regulations.
- (2) He is concerned that the institution is growing
too fast.
- (3) The nature of the growth troubles him. There
are no real estate feasibility studies. A supervisory
appraisal has been ordered. The supervisory appraisal
probably will result in the insolvency of the institution.
- (4) Accounting. Faulk outlined several accounting
problems, including not cancelling profits for sale when the
loans have been bought back, conflicts with the Association's
accountant, documentation of loans, loan underwriting, the
suspicious use of loans instead of direct investments.
- (5) The manner of compensation to Jim McDougal and
John Latham may have led to the problem. The overall incomes
of McDougal and Latham are excessive for size and problems of
the Association. Young's compensation is tied to income he
can find on the books, and this invites abuse.

LATHAM:

Greg Young does not have a contract, but a job
description.

ACCT

KFO435

FAULK:

Faulk asked again for all employment contracts.

(6) Misuse of position and usurpation of corporate opportunities. The Association has been making sales to people without financial wherewithal that are characterized "straws" as to generate business. Faulk questioned the payments to the companies noted on the June 19 letter. He questioned if payments are for real work.

Faulk stated in a general way that it seems if purpose of the Association is to generate income to certain insiders, such as Latham, McDougal, Henleys.

Inaccurate and unsupported appraisals and projections lead to early bad decisions. Better lots at the developments have been sold first, sales have occurred to straws, resale of property has occurred to add false value (land flips), and there has been failure of proper oversight by the Board of Directors.

False and inaccurate information has been given to examiners. There have been efforts by management, particularly Latham, to disguise information.

Day-to-day operations are unprofitable. Young's analysis, showing that the Association has reached a break-even point, assumes growth and relies on mishooked land sales. Faulk emphasizes that it is unusual to act on interim information, but there is serious concern. He calls to the Board to step up review. He indicates he thinks that net worth is fabricated. The cost of money of the Association is way above peer group.

Faulk suggested to the Board that they take the message to the McDougals that the McDougals get out of the business. He suggested that the Board request the resignation of Latham and elect a two-person committee to run the Association while a search is conducted for a new chief executive officer.

He also said that a Section 407 investigation will be started into whether any "shenanigans" are going on in the developments.

SELIG:

Selig agrees that this is not the time or the place to address specific issues. He asked to address general

problems identified and offer solutions. Faulk declines to listen and tells the Board and the attorneys to review the cease and desist order offered them.

THE FEDERAL HOME LOAN BANK OFFICIALS LEAVE THE ROOM.

The Board decides that it cannot sign the document because it is 19 pages long, and they have no time in which to review and analyze the proposed cease and desist order.

RECONVENE

(John Selig is absent, speaking with Karen Bruton in another office.)

FAULK:

Faulk enters and tells Board he likes to talk to Board without attorneys and asks for comments.

STEVE GIFFMAN:

Steve Giffman says Board has been active, well-intentioned, he notes that there has been a growth in net worth, he is concerned about the growth of the Association, he felt the service corporation was good because it was profitable. Steve said he relied in past on Jim McSoughal to run the service corporation.

Sarah Hawkins states that spends her time on regulatory aspects of the Association. She sees some improvements in internal controls, but also sees concern in internal controls. Reworking old problems of the Association has taken time.

FAULK:

How much control has Board had over the service corporation. He questioned the Board's knowledge of the ownership. He asked what the Board's opinion of the ownership was. No one on the Board expressed an answer to his questions on the ownership.

Faulk indicated that he doesn't mind going along with well-documented and open transactions, but the transactions occurring in the Association today are not open or documented. ACCSZ

He never likes to see compensation based on a percentage.

(Selig and Bruton return.)

FAULK:

Problem is ownership and asset quality.

SELIG:

Selig outlines alternatives. He offers to terminate the employment of the McDougals and make Jim McDougal a consultant. He offers to reconstitute the board of the service corporation to mirror that of the Association.

FAULK:

Take the message back to Little Rock that the McDougals cannot be consultants.

SELIG:

Selig offers voting trust.

FAULK:

He wants total removal of McDougals and Bill Henley.

SELIG:

Selig says Henleys are needed to sell the service corporation's properties.

FAULK:

Faulk asks Board (in a slanted way) if they would rather have third party do appraisal.

Faulk says that he thinks the Association is beginning to fizzle (fizzle is a play on the FSLIC acronym). He says he sees this now as an FSLIC run project. He wants to see what assets there are. The Federal Home Loan Bank has lost faith in the present management.

ROG:z

The banks wants a new board, manager, and asset evaluation.

SELIG:

The Board generally recognizes problem and would have no trouble with a majority of the contents of the proposed cease and desist order.

On appraisals, FSLIC gets to sign off on choice of person.

FAULK:

Latham must be terminated. He may continue as an employee for 45 days, but he can no longer be chief executive officer or chairman.

STEVE GUTMAN

He would support third party appraisals.

SELIG:

He needs time to review the proposed cease and desist order for two reasons. He needs time to understand all 19 pages of the cease and desist order, and he needs time to see if the time-frames contained within the cease and desist order can be met.

It is decided that Wednesday, July 16, is the deadline for answer on whether the Board of Directors will accept the cease and desist order.

FAULK:

By Wednesday, a search committee should be formed, the McDougals situation resolved, and the appraisers named.

SELIG:

The June 19 letter listed several prohibited activities. Along with Sarah Hawkins, John Selig discusses several of the specific prohibitions. The prohibition

ROG:1

contained in number 4 (c) of the June 19 letter concerning 90 percent loans can be modified as long as the loans have no insider relationship, a proper appraisal has been done, the borrower is credit-worthy, and the new compensation schedule proposed by the Board will be used.

ROLF COBURN:

He has concern with the marketability of the deeds at the Campobello project. Examiner Clark has not received a copy of the title insurance policy for the property as yet.

FAULK:

He restates concern about the availability of information. There have been problems in the past, and any future problems with information should be referred to the two-man committee to be formed from the Board of Directors.

SELIG:

He notes that Madison Marketing and Madison Real Estate are not included in the contents of the cease and desist order.

FAULK:

Madison Real Estate may continue operating as long as no commissions are paid to the Henleys or the McDougals.

SELIG:

John questioned the prohibition against doing business with Castle Sewer and Water. He indicated that it was necessary to do business with Castle Sewer and Water so that Castle Grande Estates can be a viable development project. He indicated that an agreement was being negotiated at the time but was not consummated.

FAULK:

Faulk said that they would consider any such agreement after the examiners had a chance to look at it.

ROOS I

SARAH HAWKINS:

She saw no reason why the Wilson company should be included on the list of prohibited companies.

CLARK:

The Wilson company had a loan from Madison Guaranty and endorsed the check representing the proceeds of that loan back to the service corporation.

SARAH HAWKINS:

Sarah strongly disagrees with his conclusion. .

MEETING BREAKS UP

PRIVATE MEETING AT WHICH STEVE CUFFMAN, JOHN SELIG, ROLF COSURN, WALTER FAULK, KAREN BRUTON, BEVERLY BASSETT, BRECK SPEED PRESENT

FAULK:

Faulk said he doesn't want to be so strict as to close the Association. He finds it hard to believe that there is no number two man in place, and the Association would fold without Latham. He indicated that he doesn't have any faith in Latham anymore.

STEVE CUFFMAN:

Steve reaffirms his faith in Latham. He states that there is no depth in management at the Association.

FAULK:

He says to use legal counsel. Latham is out. Latham was chief executive officer, and he must take responsibility.

He suggests a new board of directors be put in place.

You may have to pay extra for a new CEO that can do the job, but it is worth it.

HCCS3

SEELIG:

Questions the time limit on the net worth compliance.

FAULK:

, We plan to shrink the Association to the net worth limit. After that, grow at a slower rate. A new audit must be done because Jim Alford of Frost & Company is not independent.

SEELIG:

Takes exception and questions when loans to Alford were made. If made after exam, then there should have been no conflict.

KAREN BRUTON:

We are not going to discuss the facts.

BEVERLY BASSETT:

She first got truly concerned about the Association when Sarah Hawkins called and asked for the Campobello files. Sarah said she couldn't find the Association's files. Beverly stated that she was not entirely convinced some files are not hidden.

REC-11

Grady - please review and draft
 proposal to Hillary
 of 5/6/85

- 1) I agree with Charles that this must be permanent capital stock payable in liquidation after savings accounts. I believe it would be.
- 2) I disagree w/ Charles that it has to be done under the will card statute. I believe the Rose firm's analysis regarding ordinary business corporations is correct.
3. The problem, not addressed by the Rose firm, is the NON VOTING portion. I don't know if "capital notes" authorized under federal statute is non-voting, but the preferred stock is a similar debt/equity instrument.
4. They have to get through our registration section! FSUC too!

5000290

RLF1 03186

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, JANUARY 30, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:39 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Good morning. Today we will hear from James Clark and Dawn Pulcer. In 1986, Mr. Clark and Ms. Pulcer conducted examinations of Madison Guaranty in their capacity as Federal Home Loan Bank Board examiners. By any measure, Madison was a troubled thrift during that time.

In 1984, due to financial conditions, Madison was forced to enter into a supervisory agreement. In 1986, Jim McDougal, the Clintons' Whitewater partner, was forcibly removed from his leadership role at the bank. In 1989, Madison was taken over by the FDIC.

During that same time period, the Rose Law Firm provided legal representation to Madison. Madison's failure ultimately cost the taxpayers more than \$60 million.

In connection with their examinations of Madison, Mr. Clark and Ms. Pulcer examined the Castle Grande transaction, a transaction which they described as a series of flips and fictitious sales that also involved the warehousing of land.

We know that in the fall of 1985, Madison Guaranty and Seth Ward, Seth Ward is Mr. Hubbell's father-in-law, jointly purchased more than a thousand acres of land south of Little Rock with the idea of reselling it.

McDougal and Ward called this property Castle Grande. In reality, Seth Ward was nothing more than a straw purchaser who was brought into the deal to evade laws limiting the amount of money that a savings and loan could invest in real estate. Madison sold the property in a series of transactions that resulted in a loss of nearly \$4 million to the American taxpayers. The sales were typically made to Madison insiders and were financed by Madison loans that more often than not were not repaid.

Susan McDougal earned handsome commissions on these sales. Seth Ward was also well paid for his role in the initial purchase. The Rose Law Firm billing records recently found in the White House residence indicate that while she was a partner at the Rose Law Firm, Hillary Rodham Clinton had a dozen or more conferences with Seth Ward related to this matter, yet Mrs. Clinton has sworn under oath that she knew nothing about Castle Grande. The billing records also confirm that Mrs. Clinton prepared an option agreement for the purchase by Madison of a piece of the Castle Grande property owned by Seth Ward.

In the coming days, this Committee will be investigating whether that option was intended to be the mechanism by which Madison was to funnel commissions to Seth Ward to reward his participation in this sham transaction.

We will now hear from Mr. Clark and Ms. Pulcer. I will swear them in and then ask Senator Sarbanes or Senator Murray if they have any opening statements.

[Whereupon, James T. Clark, Bank Examiner, Federal Home Loan Bank Board, and Dawn Pulcer, Bank Examiner, Federal Home Loan Bank Board; were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

Senator Sarbanes, Senator Murray, do you have any opening comments?

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Mr. Chairman, I do have a question for you. I am curious if this is the only panel we're going to have this week. I am becoming more and more concerned that this Whitewater investigation is dragging along. I know we're reaching the February deadline fairly quickly. And I notice that we have now surpassed the O.J. Simpson trial in length, number of days, and I think it's imperative that we have as many panels as possible, we come to a conclusion here because I think we're going to risk losing our credibility and start looking partisan if we don't finish on time within our allotted dollars. And I wanted to ask you today what your intent was in having more witnesses so we could complete this task on time.

The CHAIRMAN. Well, tomorrow we have two panels starting at 10 a.m. and will probably be working well through the day. Thursday, we have another panel, which I believe will take us well through the day, so we have three sessions.

Now, we didn't have one for Monday, given obviously the need to prepare and get ready for the witnesses, but this will be our first, and two other panels will be coming in. Tomorrow, we will probably work late into the day.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Has there been an addition to Thursday's schedule? Because I only have one person on Thursday.

The CHAIRMAN. No, no, but again, we have 3 days of hearings, and we are pursuing this matter, I believe, in as expeditious a manner as we can. Now the Senator points out, and correctly so, that if you were to take a length of time, you would say that this has been an extended period of time, but for about 7 months we

were not able to go forward and examine various witnesses at the request of both Special Counsels. So I think we have been under 30 days, and I also believe that if we look at what we've accomplished in terms of gaining the facts and gaining information, I don't know how much harder we could work, but I intend to pursue it, we're going to continue to move it, and I certainly note the Senator's concern. And it is a well-founded one as it relates to seeing to it that we move the process as expeditiously as possible. And I share in that concern.

Senator MURRAY. I thank you, Mr. Chairman, and I know that we have worked long and hard to complete as much as possible, but I do think that this Committee has a responsibility to taxpayers. I know that there's been almost \$30 million spent on the Whitewater investigation, although our part of that is a little over a million. But I think that it is important that we show our constituents that we can finish this on time, that we can get our task done, because again I really fear this Committee losing its credibility if we move into the campaign season, and I don't think we want to risk that.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I just inquire, on Thursday, are we only to hear from Susan Strayhorn?

The CHAIRMAN. That's right.

Senator SARBANES. Just that one witness?

The CHAIRMAN. That's correct.

Senator SARBANES. So you expect a very short session then on Thursday?

The CHAIRMAN. I don't know how long that session will be. That session will certainly go 3 or 4 hours, maybe more. I think it is tough to predict. We have had some sessions that we thought would go rather quickly and they went far longer, but I think that will be rather comprehensive.

Senator SARBANES. Well, I am a little mystified as to what we would spend 3 or 4 hours with Susan Strayhorn on. I guess what I am really suggesting is putting another panel on Thursday.

The CHAIRMAN. Senator, this is Mr. McDougal's secretary, and I think it will be important. She's an important witness and may be able to shed light on this, and I think if Counsels want to discuss this later, they can, but Mr. McDougal's secretary, we believe, may be quite important to the process.

So again, I have instructed Counsel to work with Minority in giving them the witnesses as we are developing them. I think that there was a witness, for example, for tomorrow that was added to the panel at the Minority's request, so we will accommodate whenever we can.

Mr. Clark, do you have a statement?

Mr. CLARK. I do.

The CHAIRMAN. Would you like to give it?

Mr. CLARK. Yes.

The CHAIRMAN. Can you pull that microphone up closer to you?

Mr. CLARK. Can you hear me now?

The CHAIRMAN. Yes.

Mr. CLARK. OK. Thank you.

**SWORN TESTIMONY OF JAMES T. CLARK
FORMER BANK EXAMINER
FEDERAL HOME LOAN BANK BOARD
SIXTH FEDERAL HOME LOAN BANK DISTRICT
INDIANAPOLIS, INDIANA**

Mr. Chairman, Members of the Committee, I am James T. Clark, and I reside in Kalamazoo, Michigan. I am currently employed by the Comptroller of the Currency as a National Bank Examiner. I was previously employed in a similar capacity by the Federal Home Loan Bank Board and the Office of Thrift Supervision. I worked in the Sixth Federal Home Loan Bank District headquartered in Indianapolis, Indiana.

In that capacity, I was Examiner-in-Charge of the 1986 examination of Madison Guaranty Savings & Loan Association of Little Rock, Arkansas. After my arrival there in early March 1986, I learned that the supervisory authorities of the Dallas bank had several concerns about Madison Guaranty. These concerns included rapid growth, inadequate net worth, and self dealing.

During the course of our work, the examination crew found that a group of insiders was obtaining cash in what amounted to a pyramid scheme. The principal insider was James McDougal, who was a major stockholder of Madison Guaranty and the President of its subsidiary, Madison Financial. In evaluating Madison Guaranty's financial condition, we found that the thrift was insolvent.

By the time our field work ended in September 1986, Madison Guaranty's Board of Directors had accepted a Cease and Desist Order that restricted the thrift's activities. Members of senior management, including Mr. McDougal, also eventually left.

This past August, I testified before the Committee on Banking and Financial Services of the House of Representatives on these matters. Before appearing here today, your Committee staff asked that I address any significant issue not covered in my prior testimony. In that regard, I only wish to caution you and the Members of the Committee concerning drawing certain conclusions from the 1986 examination findings.

Specifically, in my testimony I said that the examination found no transactions involving then-Governor Clinton. I also said that based on the examination, it was possible that such transactions did occur. This last statement was not a formal reference to some small statistical possibility. Rather, it was an indication of the unknown. No one should conclude that any transaction did or did not exist unless it is cited in the examination report or in work papers. To go beyond this limitation requires further evidence or analysis that the 1986 examination did not do.

Several reports from that examination allude to the reasons for this warning. The records at Madison Guaranty were poor, missing, and in some cases, intentionally misleading. Much critical information was outside the thrift entirely and unavailable to the examiners. Though it lasted a long time, the examination only reviewed a small portion of Madison Guaranty's transactions.

I hope this clarification will correct any misunderstanding. To the extent of my memory, I will try to answer any questions you have.

Thank you.

The CHAIRMAN. Ms. Pulcer, do you have a statement that you would like to make?

Ms. PULCER. Yes, I do.

**SWORN TESTIMONY OF DAWN PULCER
FORMER BANK EXAMINER
FEDERAL HOME LOAN BANK BOARD OF INDIANAPOLIS
IN DETROIT, MICHIGAN**

Good morning, Mr. Chairman and Members of the Committee. My name is Dawn Pulcer. I am here at the Committee's request to answer your questions regarding my participation in the 1986 Federal Home Loan Bank examination of Madison Guaranty Savings & Loan located in Little Rock, Arkansas. Beginning in July 1985, I was employed by the Federal Home Loan Bank of Indianapolis as an Examiner in Detroit, Michigan.

In March 1986, I was assigned to assist Mr. James T. Clark in the examination of Madison Guaranty S&L. My review primarily focused on the real estate investments of Madison Financial Corporation and associated Madison Guaranty loans and transactions.

I remained with the Federal Home Loan Bank and later the Office of Thrift Supervision as an Examiner and Field Manager until November 17, 1995. Currently, I am the Assistant Director of the Internal Audit Department for Sterling Bank and Trust, F.S.B., in Southfield, Michigan.

This concludes my brief statement, and I would be pleased to answer your questions to the best of my ability.

The CHAIRMAN. Thank you very much.

Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Good morning, Mr. Clark and Ms. Pulcer.

Mr. Clark, you have over 20 years of experience as a Federal bank examiner; am I correct?

Mr. CLARK. Yes.

Mr. GIUFFRA. And you have participated in over 100 examinations of banks and thrifts?

Mr. CLARK. That's correct.

Mr. GIUFFRA. You just testified that you were the Examiner-in-Charge of the 1986 examination of Madison Guaranty?

Mr. CLARK. That's correct.

Mr. GIUFFRA. And Madison Guaranty was run by a man named James McDougal?

Mr. CLARK. Yes, it was.

Mr. GIUFFRA. As Members of the Committee know, Mr. James McDougal was the Clintons' Whitewater business partner. What are the responsibilities of the Examiner-in-Charge of an examination of a thrift?

Mr. CLARK. The Examiner-in-Charge is responsible for organizing the examination work, for determining its scope, for assigning various duties to the various crew members, for evaluating the institution on an overall basis, and for reporting findings to other supervisory authorities.

Mr. GIUFFRA. You started your examination in March 1986; am I correct?

Mr. CLARK. Yes, that's true.

Mr. GIUFFRA. And completed the exam in September 1986?

Mr. CLARK. That's correct.

Mr. GIUFFRA. The exam took 6 months. Assuming a bank is relatively trouble free, \$100 million in assets, about how long should it normally take to conduct an examination?

Mr. CLARK. Perhaps 3 or 4 weeks, depending upon the circumstances.

Mr. GIUFFRA. Why did it take so long to conduct this examination of Madison Guaranty?

Mr. CLARK. Well, because Madison Guaranty's problems were so severe and its records were so poor.

Senator MACK. Records were what? I'm sorry.

Mr. CLARK. Excuse me. I said because Madison Guaranty's problems were so severe and its records were so poor.

Mr. GIUFFRA. Were there any indications to you as the Examiner-in-Charge that management insiders were actively obstructing your examination?

Mr. CLARK. Yes, there were.

Mr. GIUFFRA. Could you give some examples to the Committee?

Mr. CLARK. Loan files we asked to review were often retained for an inordinately long time. It was oftentimes difficult to get information from management in terms of talking to them and getting responses. Their responses were often evasive.

Mr. GIUFFRA. Did you believe that management had concocted documents to give to the examiners?

Mr. CLARK. In some cases we thought so, yes.

Mr. GIUFFRA. And did you believe in some cases documents were backdated to be provided to the examiners?

Mr. CLARK. In some cases, yes.

Mr. GIUFFRA. Based on your 20-some years of experience as a bank examiner, would you rank Madison among the top five worst in terms of self-dealing by insiders?

Mr. CLARK. Yes.

Mr. GIUFFRA. You have no doubt about that, sir?

Mr. CLARK. None.

Mr. GIUFFRA. How about in terms of safety and soundness, top five in terms of worst?

Mr. CLARK. Yes.

Mr. GIUFFRA. This bank was a complete mess; is that right?

Mr. CLARK. It was very bad.

Mr. GIUFFRA. Now let's put on the Elmo the summary page from the examination report, you have a copy of it in front of you, sir.

Senator SARBANES. Mr. Clark, did you say bank or S&L? I want to be clear on that, when you made that ranking.

Mr. CLARK. I'm sorry. I'm now examining banks, and sometimes I do use the wrong word. It was an S&L. It was a thrift institution.

Senator SARBANES. It was not a bank, it was an S&L; correct?

Mr. CLARK. That's correct.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, I appreciate everyone has their views and opinions on this, and I say this with respect to staff, but why don't we let the witness describe and characterize how they see things rather than offer the witness ideas as to what it is? It

seems to me asking whether or not this is—what the condition was makes a better way of proceeding rather than sort of suggesting.

The CHAIRMAN. I will ask Counsel to attempt to lead less but we are trying to get the story. This is not a court of law and I think the Senator makes a good point, so if you can—he is an articulate person.

Mr. GIUFFRA. Do you have the summary page in front of you, sir?

Mr. CLARK. Yes, I see it.

Mr. GIUFFRA. Now, you indicated in your summary that Mr. McDougal was able, "To divert substantial amounts of funds from the projects to himself and others." Could you describe how Mr. McDougal did that?

Mr. CLARK. Yes. He had total control of Madison Guaranty funds. He could dispense those funds to anyone he wished at any time he wished. And he did so through the land development projects.

Mr. GIUFFRA. Now, am I correct that often in funding real estate projects, Madison would fund the entire purchase price of the transaction?

Mr. CLARK. That's correct.

Mr. GIUFFRA. That's not the normal procedure in funding a real estate project by an S&L?

Mr. CLARK. No, not at all. Normally, a borrower is required to have independent equity.

Mr. GIUFFRA. Did you discover a number of instances in which the buyer was often an insider of the company who was acting as a straw purchaser?

Mr. CLARK. Yes, a number of instances.

Mr. GIUFFRA. Who is a straw purchaser?

Mr. CLARK. It essentially is a sham purchaser who obtains legal title to a property without having any actual financial interest in the property simply as a means to hide the true ownership of the property.

Mr. GIUFFRA. In a number of instances did you discover that Madison insiders were receiving what might be called the down-payments in the form of real estate commissions or bonuses?

Mr. CLARK. Yes, that is correct.

Mr. GIUFFRA. Again, is that a proper banking practice for an S&L?

Mr. CLARK. No, particularly since it was used to create the sham transactions, to allow the straw buyers to buy the property.

Mr. GIUFFRA. Do you recall any examples in the course of your examination in which Madison insiders engaged in such transactions, sham transactions?

Mr. CLARK. Yes, there were a number of them. Particularly on—well, with several of the projects, including Maple Creek, Castle Grande, and Campobello.

Mr. GIUFFRA. Now in your opening statement you described how Madison insiders were obtaining cash through a pyramid scheme. What did you mean by that?

Mr. CLARK. Simply they would start by investing in a project. They would sell land through one of these sham transactions to a straw buyer. As a result of that sale, they would recognize on the Madison Financial, the subsidiary, and in Madison Guaranty's books, profit. That profit went into net worth. The increased net

worth allowed them to obtain more deposits. They paid a very high rate on these deposits so that in terms of normal operations, it would not produce earnings for the bank, they couldn't reinvest the funds at a high enough rate to produce those earnings.

So—but the additional deposits brought in more cash, more cash then to invest in the land developments so you have a cycle where, assets that is in the land developments, deposits are ever increasing where—and the net worth of the—net worth of the institution, the real net worth of the institution is not.

Mr. GIUFFRA. Am I correct that ultimately U.S. taxpayers bore the risk of this pyramid scheme?

Mr. CLARK. Yes.

Mr. GIUFFRA. How would this pyramid scheme come collapsing down?

Mr. CLARK. Well, if you evaluated—for instance, one way to do it would be to evaluate the assets of the institution. If you looked at their true worth and reduced the assets in the institution to their true worth, it would wipe out the net worth of the institution.

Another way is to look at the accounting rules. If you applied the accounting rules correctly, all of those profits I spoke of would have to be deferred. That also would wipe out the net worth of the institution. It would make the institution insolvent, and in fact that's what we found during the exam.

Mr. GIUFFRA. During the examination you visited most of the sites of the larger Madison-financed real estate projects?

Mr. CLARK. Yes.

Mr. GIUFFRA. And you determined that most of these projects were not feasible?

Mr. CLARK. Yes, we did.

Mr. GIUFFRA. Now, I would like to focus your attention on the Castle Grande project. We've learned from the RTC that taxpayers lost almost \$4 million in connection with this project. In your examination report, you refer to this project as the Castle Grande project; is that correct?

Mr. CLARK. Yes.

Mr. GIUFFRA. Did Madison officials refer to this project as the Castle Grande project?

Mr. CLARK. Yes, I believe they also called it Castle Creek many times.

Mr. GIUFFRA. Did they refer to it by any other name that you were aware of?

Mr. CLARK. On one or two of the records they may have referred to IDC.

Mr. GIUFFRA. But in most instances they referred to it as Castle Grande?

Mr. CLARK. Yes.

Mr. GIUFFRA. Ms. Pulcer, you were also involved in the examination of the real estate investments of Madison?

Ms. PULCER. Yes.

Mr. GIUFFRA. In your dealings with Madison management, how was this project, Castle Grande, normally referred to?

Ms. PULCER. Normally it was referred to as Castle Grande.

Mr. GIUFFRA. Mr. Clark, if we could turn a little bit later into your report, and this would be page BL 10728, this is the discus-

sion of the Castle Grande loan in your final report. I'll just read it, "This land was purchased and sold in a series of fictitious transactions involving McDougal-Henley Group members and Madison Financial." What did you mean by that in your report?

Mr. CLARK. Simply that a series of these fictitious land sales to straw buyers occurred. Again, the funding was entirely by Madison Guaranty or its subsidiaries, so that the straw buyers had no financial interest in the transactions. It created the appearance of sales when in fact there were no real sales.

Mr. GIUFFRA. Mr. Clark, you actually went out and looked at Castle Grande. We have a map of it up on the board, and I think you have a map in your packet as well. Now the map indicates that the entire project is called Castle Grande. Could you just describe for the Committee this entire project?

Mr. CLARK. It was approximately a thousand acres, north and south of 145th Street. The original acquisition was as an industrial development from a corporation called IDC. The original acquisition was for the entire thousand acres, although part of it was purchased through the straw.

Mr. GIUFFRA. Would you describe the land north of 145th Street? For example, was the land swampy, good for development?

Mr. CLARK. Well, no. North of 145th Street I would say, as I recall, the land was logged over, but it was higher ground and rolling. South of 145th Street, the land dropped off rather rapidly and became very swampy, especially in the area I believe that's marked on the chart as floodway.

Mr. GIUFFRA. So that would be the bottom right where it says floodway?

Mr. CLARK. Correct.

Mr. GIUFFRA. Did you believe this land was suitable for the type of development that was proposed here by Madison?

Mr. CLARK. No.

Mr. GIUFFRA. Now the land was acquired in connection with a workout of a project that had not succeeded. Do you know whether Madison obtained a feasibility study before moving forward?

Mr. CLARK. No, they did not.

Mr. GIUFFRA. If we could put up on the Elmo chart number 1 that we prepared.

The CHAIRMAN. What chart is that? Would you explain it to him?

Mr. GIUFFRA. These nice blue charts that the Senate was able to obtain. Was it your understanding, sir, that this property, the Castle Grande property, was purchased by Madison Financial and a man named Seth Ward jointly?

Mr. CLARK. Yes.

Mr. GIUFFRA. Mr. Ward, I gather, purchased the land north of 145th Street?

Mr. CLARK. I believe that's correct but I would have to look at our exam work papers to make sure.

Mr. GIUFFRA. Was it your understanding that Mr. Ward's purchase was fully funded by Madison?

Mr. CLARK. Yes.

Mr. GIUFFRA. That was for \$1.15 million?

Mr. CLARK. Based on my recollection, that's correct.

Mr. GIUFFRA. Nonrecourse loan. What does it mean to be a non-recourse loan?

Mr. CLARK. My understanding of the term is that Madison Guaranty would have no recourse, that is—well, no recourse against Seth Ward, that is, if he defaulted on the loan, the only thing they could do would be to take the property back. They couldn't seek any of Seth Ward's other assets.

Mr. GIUFFRA. Do you have any understanding as to why Seth Ward was put in this transaction by Madison?

Mr. CLARK. Well, he had a relationship with Madison, and—

Mr. GIUFFRA. He was a consultant to Madison; isn't that right?

Mr. CLARK. Based on my recollection, yes.

Mr. GIUFFRA. Now, you describe Mr. Ward as a straw purchaser?

Mr. CLARK. Yes.

Mr. GIUFFRA. By using Seth Ward, was Madison able to circumvent an Arkansas State law requirement limiting the amount that Madison could invest in Madison Financial which was its service corporation?

Mr. CLARK. I believe so. I would have to check precisely what Madison's net worth was at the time versus the amount of its investment in—direct investment in its service corporation to make absolutely sure, but in effect, that's what it would do.

Mr. GIUFFRA. That was your understanding, though, as to why Mr. Ward was involved in this particular transaction?

Mr. CLARK. Yes, it is.

Mr. GIUFFRA. Did you come across any documents in the course of your examination that led you to believe that Mr. Ward was put in place in order to circumvent this limitation under Arkansas law and the amount of money that a bank—that an S&L could invest in a service corporation?

Mr. CLARK. To the best of my recollection, we did run across at some point an agreement between Mr. Ward and Madison to that effect. I don't recall whether it mentioned the limitation in investment and service corporation. I did bring up the matter of limitation, the limitation in service corporation with the President of Madison Guaranty, Mr. Latham.

Mr. GIUFFRA. What did he say about the limitation?

Mr. CLARK. He said it had been waived by the State.

Mr. GIUFFRA. Did you ultimately determine that that had not been the case?

Mr. CLARK. We did not determine one way or the other.

Mr. GIUFFRA. Now what was the purpose of the limitation, as far as you know?

Mr. CLARK. To limit the amount of risk the Madison Guaranty or any Arkansas thrift could take. Direct investments in service corporations or in property are considered to be more risky than just lending on property.

Mr. GIUFFRA. Would you expect counsel advising a client in structuring—an S&L in structuring a land transaction such as this to have been aware of the investment rule?

Mr. CLARK. I'm sorry, would you repeat the question?

Mr. GIUFFRA. If outside counsel were involved in structuring this transaction, would you have expected outside counsel to have been aware of the Direct Investment Rule?

Mr. CLARK. I am not an attorney, but as an examiner, looking at a thrift institution, I would have expected their outside counsel to be familiar with the laws of the State in which the institution operated.

Mr. GIUFFRA. In this particular case, that would be Arkansas?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Would you consider this direct investment limitation to be an important regulatory requirement for a thrift?

Mr. CLARK. Yes, I do.

Mr. GIUFFRA. Could we just put up briefly the Massey billing record, DKSJN 28962. In fact, the Committee, just to make an observation, has learned in the billing records that were discovered at the White House that Mr. Massey, who was an associate at the law firm at the time, had done some research July 1, 1985, in connection with trying to learn about the Direct Investment Rule.

Ms. Hawkins was someone you came across in the course of your examination; am I correct?

Mr. CLARK. Yes.

Mr. GIUFFRA. In this conference, this billing reference that Mr. Massey has, it indicates he spoke with Ms. Hawkins and she was a former Federal Bank Examiner; isn't that right?

Mr. CLARK. Yes, she was.

Mr. GIUFFRA. Now if we could put chart 2 on the Elmo, this is a chart the Committee has prepared. This indicates that almost immediately after the initial purchase of the property, Ward and Madison sold various parcels of land to Madison insiders. Do you recall that?

Mr. CLARK. Yes, I do.

Mr. GIUFFRA. And purchasing the land for \$1.75 million, the thousand acres, just in these six transactions the land was sold for over \$3 million. How would you account for that disparity, that over \$1 million increase in the short period of time and the amount that the land was sold for?

Mr. CLARK. Well, again, most, if not all, of these transactions were not arm's length. They were to straw buyers who had no financial responsibility. Therefore, they would be willing to pay any price that Madison Guaranty or James McDougal were willing to fund. As a result of these sales, Madison Guaranty recognized—Madison Financial and Madison Guaranty recognized substantial profits creating the net worth I spoke of earlier.

Mr. GIUFFRA. But those were illusory profits?

Mr. CLARK. Yes, they were.

Mr. GIUFFRA. They were not, in fact, properly accounted for on Madison's books?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Let's turn to the next chart. This is chart 3, this indicates how the sales were financed by Madison Guaranty. On the left-hand side we indicate the purchase by Mr. Fitzhugh and we have a sales price of \$500,000, and then a nonrecourse loan of \$475,000 and then a commission of \$50,000. Below that we have 35 acres to Mr. Tucker, \$125, with a \$260,000 nonrecourse loan. What I will be doing now is taking you through each of these transactions, but it was your understanding that they were all—almost all 100 percent financed by Madison?

Mr. CLARK. Yes.

Mr. GIUFFRA. And that's not a proper approach for funding a real estate transaction by an S&L?

Mr. CLARK. No, it's very risky indeed.

Mr. GIUFFRA. Let's turn to chart number 4. This chart depicts the acquisition of 6.6 acres at Castle Grande and a Levi Strauss building that was on the property. Do you recall the Levi Strauss building?

Mr. CLARK. Yes.

Mr. GIUFFRA. In this particular instance, that transaction was Mr. Fitzhugh paid Madison Financial \$500,000, and it was funded by a \$475,000 nonrecourse loan, and Mr. Fitzhugh also received a \$50,000 commission. Now is it unusual for someone who is basically selling the property to themselves to receive a commission?

Mr. CLARK. Yes.

Mr. GIUFFRA. What was the purpose for this—giving the person who was buying the property a commission?

Mr. CLARK. Well, since Mr. Fitzhugh in essence did no work, he didn't—selling it to—essentially selling it to himself, one can conclude that the \$50,000 was not a true payment for realtor services rendered. What in effect it did was allow Mr. Fitzhugh to buy the Levi Strauss building with no funds of his own. All the money came from Madison Guaranty or one of its operating entities.

Mr. GIUFFRA. And in fact, Madison Guaranty we learned booked paper profits of \$439,000 on this particular transaction?

Mr. CLARK. I believe that's correct.

Mr. GIUFFRA. Were there problems with regard to the appraisal of this particular property that you can recall?

Mr. CLARK. I can't recall specifically on this particular property. However, generally there were very serious problems with all of the appraisals that were done on various pieces of property at Madison—excuse me, at Castle Grande.

Mr. GIUFFRA. Now let's put chart 5 on the Elmo. This is an acquisition of 35 acres of Castle Grande by Jim Guy Tucker, who was then an attorney, outside attorney to Madison Guaranty. He purchased this land for \$125,000, and received a \$260,000 nonrecourse loan. What does that indicate to you, sir?

Mr. CLARK. Well, that not only did Mr. Tucker receive funding from Madison Guaranty for the full purchase price of the land, but also he received approximately \$135,000 cash in addition to the purchase price.

The CHAIRMAN. What a bank. That is a great bank. You actually go and—

Senator MACK. It's an S&L, though.

The CHAIRMAN. A great S&L, excuse me. You buy the land for \$125,000. They give you \$260,000 to buy the land for \$125,000 so you actually put \$135,000 in your pocket and then besides that, they agree that they won't sue you if you can't pay.

Mr. CLARK. It is quite a deal, sir.

The CHAIRMAN. That is the sweetheart of sweethearts. I mean, that is absolutely—

Senator MURKOWSKI. You looking for one of those?

The CHAIRMAN. No, no, I am not looking for one of those.

[Laughter.]

When you saw that, did that bother you?

Mr. CLARK. It surely did.

The CHAIRMAN. I mean, the other stuff is wild, where a guy buys property for \$500,000, he gets \$475 plus a loan plus \$50,000 commission so he can put the \$25,000—he only got \$25,000. He bought the land and he put \$25,000 in his pocket; right?

Mr. CLARK. Yes.

The CHAIRMAN. Next fella comes along, he bought the land, he has a nonrecourse loan, he puts \$135,000 in his pocket.

Mr. CLARK. That's right.

The CHAIRMAN. That's all taxpayer money.

Mr. CLARK. Well, it's Government-insured deposits, yes, sir.

The CHAIRMAN. In the final analysis it comes out when that bank goes under and there's no way a bank can survive if it's going to operate that way, that the taxpayers are funding this kind of stuff.

Mr. CLARK. That's correct. Ultimately the insurance would guaranty deposits.

The CHAIRMAN. Sure, OK.

Mr. GIUFFRA. Mr. Clark, did you discover that in a number of instances the loan files did not sufficiently document the disbursements of the loan proceeds?

Mr. CLARK. Yes, that was true of almost all the loan files.

Mr. GIUFFRA. In this particular case, you had to look through the check clearing records to try to find out how the money was used?

Mr. CLARK. That's correct.

Mr. GIUFFRA. In this particular instance I believe the \$135,000 went to Tucker and some of that money was supposedly to be used to clear trees on the property?

Mr. CLARK. That's my recollection of what we were told.

Mr. GIUFFRA. Do you think it would have cost \$135,000 to clear those trees?

Mr. CLARK. No, sir, we didn't feel that at the time.

Mr. GIUFFRA. Just a few more questions. If we could put on—one other point on this one. There was a \$12,500 commission paid to Susan McDougal. She was the wife of Jim McDougal?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Were you troubled when you saw this commission being paid to Mrs. McDougal?

Mr. CLARK. Yes.

Mr. GIUFFRA. Do you think Mrs. McDougal did any work in connection with this particular transaction?

Mr. CLARK. No, I don't think any benefit accrued to Madison Guaranty.

Mr. GIUFFRA. So this was just a way to funnel money to Mr. McDougal and his wife?

Mr. CLARK. Yes.

Mr. GIUFFRA. If we could put on another chart, number 6, this is an acquisition of 59 acres by something called Master Developments, Inc. Master Developments, Inc. was a company that was set up by Mr. Randolph, who was someone who was a Madison insider and the Henleys. The Henleys were related to Mrs. McDougal; is that right?

Mr. CLARK. Yes, that was Mrs. McDougal's family. They were Jim McDougal's in-laws.

Mr. GIUFFRA. In this particular instance, Mr. Henley received a \$47,200 commission for selling the land to himself?

Mr. CLARK. Essentially, yes.

Mr. GIUFFRA. Again, that was just a means to funnel money to Mr. Henley to fund the transaction?

Mr. CLARK. That's correct.

Mr. GIUFFRA. An improper practice by an S&L?

Mr. CLARK. Correct.

Mr. GIUFFRA. We've subsequently learned that the RTC sold this property for \$100,000 in 1992. Mr. Chairman, this will just take 5 more minutes. Mr. Clark, during the examination——

The CHAIRMAN. With the indulgence of the Minority, I would ask that we give Mr. Giuffra another 5 minutes to at least complete this so we don't have to come back to that and we'll have that over.

Go ahead.

Mr. GIUFFRA. Were State examiners actively involved in your examination?

Mr. CLARK. No.

Mr. GIUFFRA. Would you normally have expected State bank examiners and regulators to have been more actively involved?

Mr. CLARK. Normally, I would. The arrangements between Federal examiners and State examiners at the time varied from State-to-State, but usually there was more contact.

Mr. GIUFFRA. Typically when you examine an S&L, the State S&L regulator will be more involved and sometimes participating side-by-side with the Federal regulator?

Mr. CLARK. Yes, particularly when the problems at the thrift were as serious as those at Madison Guaranty.

Mr. GIUFFRA. Now did there come a time when you learned that Ms. Beverly Bassett Schaffer—who was Ms. Schaffer?

Mr. CLARK. At what time?

Mr. GIUFFRA. In 1986.

Mr. CLARK. At that point my recollection is that she was the State Supervisor of Thrift Institutions but that was among other things.

Mr. GIUFFRA. Did you learn that Ms. Bassett had done some legal work for a McDougal project while in private practice in the course of your examination?

Mr. CLARK. Yes, we did.

Mr. GIUFFRA. Were you troubled when you learned that Ms. Bassett had done some legal work for Mr. McDougal in the past?

Mr. CLARK. I became troubled when I learned that she would attend the supervisory meeting with the board of directors in July 1986, and at that point I learned who she was, that is, the State Supervisor.

Mr. GIUFFRA. Did you believe that Ms. Bassett should have recused herself from Madison matters because of the fact that she had represented Madison while a lawyer in private practice?

Mr. CLARK. I'm not an attorney, but I do think based upon my experience as examiner, it may very well have been a conflict.

Mr. GIUFFRA. Did you think she had a conflict?

Mr. CLARK. I thought so.

Mr. GIUFFRA. Ms. Pulcer, you took notes at this particular meeting that was held on July 11 of the Federal Home Loan Bank Board in Dallas?

Ms. PULCER. Yes, I did.

Mr. GIUFFRA. This will be the last question. If we could put up Ms. Pulcer's notes.

The CHAIRMAN. Are those the notes we saw last week?

Mr. GIUFFRA. Yes, these are a little different.

Now, Ms. Pulcer, you attended this meeting of the Federal Home Loan Bank Board in Dallas?

Ms. PULCER. Yes, I did.

Mr. GIUFFRA. Mr. Faulk was the supervisory agent in connection with this examination; is that right?

Ms. PULCER. Yes, he was.

Mr. GIUFFRA. Mr. Faulk, according to your notes, asked Beverly Bassett if she wants—

The CHAIRMAN. Look, let me say this. Because the Minority is questioning the fact that the light has been on for several minutes now and they want to attempt to hold, I want you to be able to ask Ms. Pulcer these questions without having to speed through them. If you're going to do it the way you should, it's going to take more time, we're going to be over the clock, so we'll come back to that and will recognize Senator Sarbanes.

Senator SARBANES. Mr. Clark and Ms. Pulcer, did you testify before the House Banking Committee?

Mr. CLARK. Yes.

Ms. PULCER. Yes, we did.

Senator SARBANES. Was that in a public hearing?

Mr. CLARK. Yes.

Senator SARBANES. Was that on the very matters that you are being asked about here this morning?

Mr. CLARK. Yes.

Senator SARBANES. Was that an extensive public hearing on the House side?

Mr. CLARK. It lasted around a day.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Clark, in your opening statement, you have suggested that before appearing here today, the Committee staff, and by which I take it that's the Majority staff, asked that you address any significant issue not covered by your prior testimony. You've testified for about a half an hour here this morning. Is there anything here that you have not written or testified about?

Mr. CLARK. Is your question is there anything that you've said this morning where I did not testify to it previously?

Mr. BEN-VENISTE. Yes.

Mr. CLARK. I may not have gone into all of the details previously but certainly the general area was covered previously.

Mr. BEN-VENISTE. Indeed your concern about the inside deals at the Madison Bank which involved flipping various properties and sham transactions was the subject of your report back in 1986 and 1987, 10 years ago.

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. And that is what concerned you 10 years ago so that you wanted to come down pretty hard on Madison Bank?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. So to the extent that Madison Bank was operating in a way that benefited insiders and sweetheart deals, none of this is new information, this is stuff that's been kicking around for at least 10 years?

Mr. CLARK. To the extent it was covered in our exam report, it's been around for 10 years.

Mr. BEN-VENISTE. This is stuff that's been kicking around for at least 10 years.

Mr. CLARK. To the extent it was covered in our exam report, it's been around for 10 years.

Senator SARBANES. Were you interviewed or deposed by the Pillsbury people in the course of their inquiry?

Mr. CLARK. I was interviewed.

Senator SARBANES. You too, Ms. Pulcer?

Ms. PULCER. No, I was not.

Senator SARBANES. Just Mr. Clark. Was that at some length, Mr. Clark?

Mr. CLARK. My recollection is the interview covered 2, 3 hours.

Mr. BEN-VENISTE. And of course we have the transcript of your interview at the House Committee, and it is extensive, is it not? You have gone over it in preparation for your testimony?

Mr. CLARK. No, I have never seen the transcript, sir.

Mr. BEN-VENISTE. Oh, really? Well, it is extensive.

Mr. CLARK. It appears to be, sir.

Senator SARBANES. You were part of a panel on the House side?

Mr. CLARK. Yes, I was.

Senator SARBANES. How many people were on that panel?

Mr. CLARK. As I recall, five.

Mr. BEN-VENISTE. Let me ask you, sir, whether there is a distinction to be drawn between the evasion of the 6 percent Direct Investment Rule in connection with the acquisition of the IDC property and the land flips that you have talked about by the insiders?

Mr. CLARK. I am not sure that I understand your question.

Mr. BEN-VENISTE. Let me see if I can clarify it. In connection with the acquisition of the land, is there a suggestion that Madison somehow designed to pay an inflated price for the property in the first place?

Mr. CLARK. No.

Mr. BEN-VENISTE. There is no indication that there was some collusion between the seller of that land and the Madison interests?

Mr. CLARK. That I am not sure of.

Mr. BEN-VENISTE. Did you see any evidence of it?

Mr. CLARK. We thought there might have been some connection between the attorney, Tucker, and IDC and the purchase. I believe one of the Madison insiders acted as a go-between in the purchase.

Mr. BEN-VENISTE. Who are you referring to?

Mr. CLARK. I'm sorry, I don't recall the name. I would have to refer to the work papers.

Mr. BEN-VENISTE. Let's be very clear. I know you are a careful fellow. Do you, as you sit here now, have reason to believe that Madison, at the very inception of this transaction, paid an inflated price for the land?

Mr. CLARK. I have no evidence of that.

Mr. BEN-VENISTE. OK. Let's talk about the involvement of the Rose Law Firm in the transactions that you have described here today. Did the Rose Law Firm represent either buyer or seller in any of the land flips and sham transactions that you've testified about?

Mr. CLARK. I don't know. I have not seen any documentation to that effect.

Mr. BEN-VENISTE. Now the testimony that you gave with respect to—strike that—that this is one of the top five worst banks that you have—savings and loans that you have examined back in that period of time. If I understand it, you came into the district of Arkansas under some kind of a special arrangement; is that correct?

Mr. CLARK. Yes, that's correct.

Mr. BEN-VENISTE. What was your regular jurisdictional territory at that point?

Mr. CLARK. I normally worked within the Sixth District, that would be Indiana and Michigan, I generally worked in Michigan.

Mr. BEN-VENISTE. So in terms of Texas and Arkansas, that was not your regular territory?

Mr. CLARK. No.

Mr. BEN-VENISTE. Indeed, is it fair to say that you were assigned to this S&L in Arkansas because the examiners out of the Dallas region were up to their eyebrows in problem savings and loans in Texas and Arkansas?

Mr. CLARK. Yes, that's fair.

Mr. BEN-VENISTE. And that they had relegated to themselves the most serious cases in Texas and Arkansas?

Mr. CLARK. That I don't know. I don't know what the basis for their decision was concerning who was assigned to which thrift.

Mr. BEN-VENISTE. In terms of the size of banks, are you aware of where Madison Savings & Loan was in the hierarchy of troubled savings and loans in Texas and Arkansas?

Mr. CLARK. It was one of the smaller ones.

Mr. BEN-VENISTE. Is it fair to say that the examiners out of the Dallas office were trying to marshal their resources to deal with the most serious problem banks in their districts?

Mr. CLARK. When you say, "marshal their resources," I presume you mean the Dallas banks' resources?

Mr. BEN-VENISTE. Yes.

Mr. CLARK. OK. Again, I don't know what their selection criteria was. Certainly they were marshaling and deploying their resources to the best of their ability to treat the problems that existed.

Mr. BEN-VENISTE. And it is clear that you knew that, among the hierarchy of banks, Madison Savings & Loan was among the smallest problem banks in that district?

Mr. CLARK. It was toward the smaller end, yes.

Mr. BEN-VENISTE. Let me ask you about the three problem areas that you'd focused on as causing the more serious losses to Madison Guaranty Savings & Loan. You listed Maple Creek, Castle Grande, and Campobello; is that correct?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. Who was the attorney representing Madison bank in connection with Maple Creek?

Mr. CLARK. I don't recall.

Mr. BEN-VENISTE. It was not the Rose Law Firm, was it?

Mr. CLARK. I don't know one way or the other.

Mr. BEN-VENISTE. Do you have any reason to believe it was?

Mr. CLARK. No.

Mr. BEN-VENISTE. With respect to Campobello, do you know who the law firm was representing Madison Guaranty Savings & Loan?

Mr. CLARK. Well, I know that, with respect to at least one issue, it was the Rose Law—the—advice from representatives of the Rose Law Firm was sought. In other aspects, I don't recall.

Mr. BEN-VENISTE. What is the one aspect that you believe the Rose Law Firm worked on in Campobello, sir?

Mr. CLARK. That would have been compliance with the Interstate Land Sales Act.

Mr. BEN-VENISTE. And who at the Rose Law Firm do you think worked on that project?

Mr. CLARK. To the best of my recollection, Beverly Bassett was at least one.

Mr. BEN-VENISTE. So you think that Beverly Bassett worked for the Rose Law Firm. If I were to tell you that you were incorrect in that assumption, then your assumption that the Rose Law Firm played some role in Campobello would also be incorrect?

Mr. CLARK. I don't—it may be incorrect.

Mr. BEN-VENISTE. Ms. Bassett testified before us that she had worked, prior to her appointment to be Securities Commissioner, at the Tucker law firm; is that correct? Will you accept that?

Mr. CLARK. I don't know what she testified.

Mr. BEN-VENISTE. So putting aside the mistaken belief that Ms. Bassett worked for the Rose Law Firm, do you have any reason to believe that anyone from the Rose Law Firm worked on a Campobello transaction?

Mr. CLARK. I don't recall any other documents, sir, that would indicate one way or the other.

Mr. BEN-VENISTE. So I take it that is a yes, you have no reason to so believe? Let's move on.

Mr. CLARK. Yes, I have no reason to so believe.

Mr. BEN-VENISTE. In connection with the Campobello loss, would you explain to the Committee how that loss occurred?

Mr. CLARK. It was in a similar manner to all the projects. Funds were disbursed to buy the property without due consideration of whether the development was feasible or not.

Mr. BEN-VENISTE. Who were the insiders who were involved?

The CHAIRMAN. Counsel, if you have any records that you could give to him to refresh him as you go through this, I think that would be helpful as opposed to asking him to testify by recollection. In other words, if you do have, then I would share them with him so that he could be more responsive to your questions.

Mr. BEN-VENISTE. Mr. Chairman, there is an entire report that was prepared under the authority of Pillsbury Madison & Sutro by a law firm called Jordan & Keyes, LLP. It was a report to the Resolution Trust Corporation which was delivered on September 27, 1995. It cites chapter and versus on this subject. But since these two examiners are apparently here to testify what they saw 10 years ago, I thought I would continue along that line.

The CHAIRMAN. Mr. Ben-Veniste, if you want to, why don't you make available, if you have this and you want to ask him about various specifics of this, it is only fair to send it down to Mr. Clark. He is not a defendant. And then review those questions that you would want to put to him, but give him the record so that he can do that as opposed to just asking questions in which he has no reference to any documents. I think you would get more out of it.

Senator SARBANES. If Mr. Clark doesn't recollect, he should say he doesn't recollect; and if he does, he ought to try to recollect—

The CHAIRMAN. He has—sure.

Senator SARBANES. —and then we may seek to refresh his recollection.

The CHAIRMAN. I'm saying he has indicated, on a number of occasions now, he hasn't recollected, and if you are going to continue to persist when he says he doesn't recollect, then I'm going to be forced to ask you to either give him something to help him refresh his recollection or cease and desist from that line.

Senator SARBANES. I don't think we got an answer to the question that was put.

The CHAIRMAN. Mr. Ben-Veniste, put the question to him and let him answer it.

Mr. BEN-VENISTE. Mr. Clark, do you remember who the insiders were? I don't mean to be unfair to you.

Mr. CLARK. I remember some of them; obviously with reference to documents, I might be able to recall more.

Mr. BEN-VENISTE. Ms. Pulcer, did you have responsibility for reviewing the Campobello transaction?

Ms. PULCER. No, I did not.

Mr. BEN-VENISTE. Who do you remember?

Mr. CLARK. OK, obviously Mr. McDougal, Susan McDougal. I believe Sorenson, Kuca. There may be others, I just don't recall at this point.

Mr. BEN-VENISTE. We will get you some material to try to help your recollection. Does the name Sheffield Nelson ring a bell with you?

Mr. CLARK. Yes, it does.

Mr. BEN-VENISTE. Who is Sheffield Nelson? Do you know who he was in Arkansas?

Mr. CLARK. No, I recognize the name, but I can't place it.

Mr. BEN-VENISTE. Do you know who Mr. Nelson's partner was?

Mr. CLARK. No.

Mr. BEN-VENISTE. And do you know whether Mr. Nelson and his partner made a considerable profit in connection with the Campobello transaction?

Mr. CLARK. I'm beginning to recall it, now that you mention it. I believe there was some involvement there between buying and selling pieces of the Campobello property.

Mr. BEN-VENISTE. Do you know whether Mr. Nelson and his partner made a substantial profit?

Mr. CLARK. I don't recall that.

Mr. BEN-VENISTE. Do you know the relative size of the loss between Castle Grande and Campobello?

Mr. CLARK. Do you mean in the examination report?

Mr. BEN-VENISTE. Yes.

Mr. CLARK. Well, the loss classification from Castle Grande was \$1,787,000, approximately; and there was no loss classification for Campobello. The entire amount was classified as doubtful, that was \$3,733,000.

Mr. BEN-VENISTE. Now at the time of your examination, those numbers obtained, but at the end of the day, after the savings and loan was taken over and the assets were sold, do you happen to know what the figures turned out to be in terms of the loss sustained?

Mr. CLARK. No, I don't.

Mr. BEN-VENISTE. In connection with the—let me see whether these numbers will help your recollection. In Castle Grande, it was \$3.8 million and change; and Campobello was \$5.5 million and change. Does that help your recollection?

Mr. CLARK. What are these numbers you are reading to me? Are these the ultimate—is this the ultimate loss borne by the RTC?

Mr. BEN-VENISTE. Yes, and these are figures from the Pillsbury Madison & Sutro Report, which this Committee has made part of its record.

Mr. CLARK. I didn't have anything to do with the workout of these projects. I never did know what the ultimate loss was.

Mr. BEN-VENISTE. You didn't follow through on it? I am not suggesting there was a reason for you to do so.

Mr. CLARK. No, I understand. But, no, I was not involved.

Mr. BEN-VENISTE. The portion of your involvement that is relevant is the fact that, back in 1986, you and Ms. Pulcer reviewed the records of the bank to the extent they existed and were turned over to you, made an analysis of those records, and came to a conclusion with respect to the financial health of that savings and loan institution at that time; correct?

Mr. CLARK. Correct.

Mr. BEN-VENISTE. You gave your report, your report was acted upon. Do you happen to know when it was that Ms. Bassett recommended that the savings and loan be taken over?

Mr. CLARK. I believe I heard during the House hearings that it was sometime later. I am not sure I recall precisely.

Mr. BEN-VENISTE. In December 1987, according to the records we have, she wrote to the Federal Home Loan Bank Board to ask that the savings and loan be taken over. Do you know the reason given her why the Bank Board could not act?

Mr. CLARK. No, I don't.

Mr. BEN-VENISTE. Do you know how much of the loss ultimately sustained by Madison Savings & Loan was occasioned by the delay between the time that Ms. Bassett requested that the savings and loan be taken over and the time that the Federal authorities actually acted?

Mr. CLARK. No, I don't.

Mr. BEN-VENISTE. Do you know that it was substantial?

Mr. CLARK. I would suspect that a substantial portion of the ultimate loss would have accrued after the exam. I am not sure about the timing after that.

Mr. BEN-VENISTE. So you are in no position to say on the basis of any work you have actually performed?

Mr. CLARK. No.

Mr. BEN-VENISTE. Is there any additional new information that you can provide this Committee consistent with your opening statement that was not provided to the House Committee?

Mr. CLARK. Again, not beyond the one caution I put forward in my statement concerning the limitation on conclusions that can be drawn from the 1986 examination.

Mr. BEN-VENISTE. Well, you knew as a result of what you looked at that the Clintons were not parties to any of these land flips or insider transactions; correct?

Mr. CLARK. I knew that, of the transactions we looked at, they were not parties.

Mr. BEN-VENISTE. And indeed you were looking specifically to see whether the Clintons were parties to any transactions because you had been advised at the time that you began your inquiry that Mr. McDougal and the Clintons had some relationship; correct?

Mr. CLARK. Not quite. What we were doing, we were looking at projects. Now, we had the names of various people in mind, including that of Mr. Clinton, to see if any funds came out of those projects to those individuals. But we weren't specifically looking for transactions from Mr. Clinton.

Mr. BEN-VENISTE. You made a list up of individuals who you were specifically looking for in terms of the transactions of Madison Savings & Loan?

Mr. CLARK. What I am trying to express is, that wasn't quite the process. The process was we were looking at certain developments and looking at funds coming out of the those developments, and to insiders. We had a list of potential insiders, and that list included Mr. Clinton's name.

Mr. BEN-VENISTE. Oh, that's the point that I was making, that you were aware and you were mindful that this is one of the things that you were going to investigate to determine whether there was anything to it. And your conclusion was, on the basis of what you saw, that there was indeed nothing to the suggestion that Mr. Clinton might be involved as an insider in these transactions?

Mr. CLARK. Not quite. My conclusion was that we didn't find anything going to Mr. Clinton. No, no, sir——

The CHAIRMAN. Let him finish his question. Then if you have to follow up, you can answer.

Mr. CLARK. Look, this gets to a very important point here, and I think frankly this is the point that caused confusion in my testimony before the House. There's quite a big difference, particularly in the case of Madison Guaranty, between saying I didn't find something, didn't find a certain transaction, to saying it didn't occur. It is not just a logical difference; it isn't just a bow to saying you can't prove a negative. There is an awful lot out there, an awful lot of transactions that occurred at Madison Guaranty the examination didn't look at. And that's the difference, that's why, yes, we didn't find any transactions involving Mr. Clinton, but given the process of the examination, we wouldn't necessarily have.

Mr. BEN-VENISTE. OK. You looked at the material transactions; correct? You wanted to focus on material transactions?

Mr. CLARK. We looked at the large land developments.

Mr. BEN-VENISTE. In your testimony at page 212, you made the statement, yes, I was informed by Mr. Parr. Who is Mr. Parr?

Mr. CLARK. Mr. Parr was the Field Manager in the Little Rock office of the Dallas bank.

Mr. BEN-VENISTE. OK. You were informed by Mr. Parr that Mr. McDougal was a friend of then-Governor Clinton's, and I believe they may have been business partners by Ms.—

The CHAIRMAN. Mr. Ben-Veniste, please, can we give him a copy?

Mr. BEN-VENISTE. Sure.

The CHAIRMAN. I mean, we do it with every witness. You want to stop the time?

Mr. BEN-VENISTE. While we are waiting for copies to be made, let me ask you this other question. I am puzzled, this is the first we have seen of this chart that's been put up here in the room, at least the first I've seen of it.

You indicated that there were no feasibility studies, to your knowledge, made in connection with the Seth Ward/Madison financial transaction; correct?

Mr. CLARK. I indicated there were no feasibility studies done, is my understanding—my recollection prior to the time of purchase. There certainly were no adequate feasibility studies ever done on the project.

Mr. BEN-VENISTE. And I am not suggesting there ever was an adequate feasibility study. But if you get up and take a look at that chart, could you read the bottom of it? I mean, in the center, what does it say?

Mr. CLARK. It says, "Castle Grande." It says, "Castle Grande feasibility study." I think that's from the Manes—

The CHAIRMAN. Wait, let him finish.

Mr. CLARK. I think it is from the Manes, Castin study which was not—did not really determine feasibility.

Mr. BEN-VENISTE. So they called it a feasibility study, but it really didn't, in your view, determine feasibility?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. That's fine, I just wanted to clarify that point.

Senator DODD. While you are waiting for that, let me ask you if I can, I'd like to go back to—you responded strongly to the implication, the question was asked to you whether or not there were any—you had encountered any evidence of the Clintons involved in any of these—what did you call them, Mr. Ben-Veniste?

Mr. BEN-VENISTE. Sham or flips.

Senator DODD. Sham or flips. And you made the distinction between what you were able to discover and what might be out there. I appreciate that distinction. I am interested in how my colleagues might react to such a distinction. But, nonetheless, in your examination, did you find anything, yes or no? I appreciate what you may think, you didn't see every possible transaction all over Arkansas. But based on what you saw, as an examiner, did you find anything?

Mr. CLARK. Based upon what I saw, no. However, I didn't look—it is not just every possible transaction, we didn't look at most of the transactions.

Senator DODD. I understand. I appreciate that. I am trying to get at what you know. I realize maybe others may find something. Based on your examination, the answer is no?

Mr. CLARK. That's correct.

Senator DODD. OK. Thank you.

Mr. BEN-VENISTE. Now, you have in front of you, I hope, from your House testimony, page 212 and 287.

Mr. CLARK. Yes.

Mr. BEN-VENISTE. Mr. Clark, again let me pick up at line 4 on page 212 where you said,

Mr. CLARK. Yes. I was informed by Mr. Parr that James McDougal was a friend of then-Governor Clinton's, and I believe they may have been business partners.

Mrs. ROUKEMA. So you recall that Mr. Parr not only mentioned the friendship, but that they were not only social acquaintances, but business relationships between the two?

Mr. CLARK. Business and that they were both involved—there were political connections as well.

I believe he may have mentioned—I believe he mentioned it at the time that there may have been business connections, but I am not absolutely positive of that.

Mrs. ROUKEMA. Primarily, at that point, you were very clear, however, concerning the political connections?

Mr. CLARK. Yes.

And at page 287, line 12,

Mr. SANDERS. As your investigation continued, what did you discover about Mr. Clinton's role in Madison's financial troubles?

Mr. CLARK. We didn't find any financial transactions with Mr. Clinton.

Mr. SANDERS. So you found nothing whatsoever?

Mr. CLARK. We found no transactions involving Mr. Clinton financially. We did not find funds going to Mr. Clinton.

I would like to cede the remainder of my time to Senator Dodd. Senator DODD. I have a yellow light on here.

Mr. BEN-VENISTE. We can wait until the next time.

Senator DODD. Mr. Chairman, the yellow light is on.

The CHAIRMAN. Finish it.

Senator DODD. I am going to take a little more time with this, but my point is here, back here, and part of it I don't have in it my hands, but the fact that we had both these witnesses before the House—the Social Security Administration had 53 days of hearings. The Interstate Highway System was established in 10 days of hearings. The entire Iran-Contra was 21 days of hearings. The O.J. Simpson trial was 289 days from beginning to end—288 and we have now gone 289 days.

I will come back to this, Mr. Chairman. We have to move this along. This is just going on too long. Here we have an opportunity where we have previous public testimony, and I am not faulting either of our witnesses here, but they have been before Congressional Committees. We could certainly go over that testimony and examine it, if there are additional questions submit them in writing. But to spend an entire day here basically going through the same ground that's been gone over, I must raise again, the point that it is appearing as though we are dragging along here. And I will come back to this in a few minutes because I want to inquire of the Chair, as well as the Ranking Member, Senator Sarbanes, if there isn't some way here that we can begin to wrap this up. It's really gone on too long in my view.

The CHAIRMAN. Before I recognize Senator Mack, I will ask him if he will yield a minute to me. Put on the light. I'm going to make some comments to this.

There is an increasing drumbeat that I am hearing. Some letters were sent to me—by the way which I never received—from two

Congresswomen, it is one thing to send somebody a letter and then put it out to the press. It is another thing to send it to the press first. I'm talking about Congresswoman Schroeder and the Congresswoman from, I believe, Georgia as well.

If you are going to send a letter to someone asking them questions or making observations, it seems to me that you should send it to them, you don't just distribute it to the press. In these letters they accused this Committee and the Chair of pillorying the First Lady. That is not the intent of the Chair, it is not the intent of this Committee. We are going to move forward in a thorough, comprehensive, and fair manner. And I will not be deterred by that kind of attack. It is just not going to take place.

Now as it relates to looking at the cost of the hearings and to the timeliness of the hearings. These hearings were delayed for 6 to 7 months, not because of the Chairman, and when I was Ranking Member as well, I didn't want to put them off. At that time, Senator Riegle was Chairman, but it was because the Special Counsel asked us not to examine various witnesses and not to get into various phases including Arkansas. That occasioned about a 6- or 7-month delay, and to why we have not been able and should have been able to move forward in some of these areas.

The fact of the matter is the production of documents has been delayed and we have just received the new materials which have recently appeared. And I will not characterize the manner in which they appeared, but certainly there are questions as to how and where they were as it related to the billing records, et cetera.

We are going to continue to move forward and we are going to do it thoroughly, comprehensively, and above all, fairly. That's my statement to it.

Senator DODD. Mr. Chairman, I am not digging in. I appreciate the Chairman's point, but you understand my point as well. We are going to have a request here for \$600,000 more, the total cost of this entire investigation exceeding \$30 million, the Congressional cost of it approaching \$2 million. Here we have two witnesses that have appeared before Congressional hearings, spent a day doing so. We have their testimony. Now certainly if you want to file some questions to them to cover some ground, I can understand that. But we are trying to get this work done.

The Chair, by his own comments earlier on, suggested that we ought to try and get this done as quickly as possible. We have done two-thirds of the hearings. We certainly ought to complete the last third of these hearings at least in the same amount of time, if not less time, than the first two parts. And here we are suggesting we might go on for months on this.

There is a drumbeat coming, because frankly—this is the longest hearing in the history of the U.S. Congress, that I know, on a matter we have yet to identify a single illegality or unethical behavior on the part of the people that are the subjects and the targets, we all know of.

After 258 days we are no further along in this process in that sense. So there is a sense of frustration on the part of those of us here who see witnesses come and testify before Congress. We have the availability of that testimony. Why don't we just move on in-

stead of having another full day with these witnesses? That's my point, and you understand the frustration.

The CHAIRMAN. Certainly, I do. But I might add that this witness was not examined in any sense of detail as it relates to Castle Grande, and that they touched on it very briefly in a review of the records, and did not go into it in terms of the detail we have. I think a good part of that takes place as it relates to the manner in which the House conducts its hearings, where they permit just 5 minutes and there are so many Members, but there was not that kind of review.

Obviously, this has become something of concern given the recent finding of the billing records. So we are not attempting to bring people in to replot old ground. And I assure you where we can, we will attempt to minimize that, but obviously it will be necessary to bring some witnesses in. I will take under advisement the fact that there may be some that we can rely upon their previous testimony and certainly look at depositions as a manner to move the process forward.

Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

Let me express my appreciation to both the witnesses for being here this morning. You have difficult tasks. Examiners of financial institutions get blamed for everything they do. I can remember hearings in which bank examiners and examiners of financial institutions were harassed for being too tough, and therefore restricting credit in the country; and other times of not being tough enough, and allowing for collapse of financial institutions.

You go before management of the financial institutions who totally disagree with what you have to say about the loans that they have put on their books. The boards have a tendency to be very tough in questioning you and then you come before the Congress and you have the same treatment. So I realize how the tough the job is and I appreciate your action here.

I will probably spend my time this morning, Mr. Clark, going over one of the transactions that came out of the Castle Grande transaction, and that is the sale to Mr. Fitzhugh. I think that Castle Grande and the sale to Mr. Fitzhugh probably raises all of the problems that have existed in Madison Guaranty, or at least a good portion of them.

The sale to Mr. Fitzhugh, as I remember, was a sale of about \$500,000. There was a nonrecourse loan and, as we have already discussed here this morning, that means that the borrower had absolutely no liability, could turn around, and in essence, I guess, sign a quick claim deed back to the financial institution, walk away with no loss; is that correct?

Mr. CLARK. That's essentially correct.

Senator MACK. So it was a nonrecourse, no personal liability, no other assets of the individual were tied up, it was a 100 percent-plus finance of the purchase. The commission was used for whatever downpayment may have been made. Am I correct so far?

Mr. CLARK. That's correct.

Senator MACK. As you reviewed Castle Grande, I think one of the things that you had mentioned that you were concerned with, was again insider transactions, insider sales. And I am going to quote one of your comments from the May 8, 1986 interim report in which you say, "since they appear to be acting as straws"—and when you use the word "they," I am assuming you used the borrower there—"since the borrowers appear to be acting as straws for Madison Financial, they cannot be relied upon for repayment no matter what their individual financial resources may be."

I guess what you are saying there is regardless of the strength, the financial strength of the individual, it really is meaningless because they are acting on behalf of Madison Financial; is that right?

Mr. CLARK. That's correct. In many cases, the straw borrowers did not have the financial strength necessary to support the size of the loans they were being granted. But in any case, since the intent was that they not be financially responsible for these transactions, you really—even if they did have assets, you couldn't rely upon them for repayment.

Senator MACK. You went on further to raise another point, that under Generally Accepted Accounting Principles, it was not appropriate for Madison to recognize profits on those land sales since, again, there were insiders and in essence there was no risk, or frankly, no ownership transfer; is that correct?

Mr. CLARK. I'm sorry, could you repeat the question?

Senator MACK. The point I am getting at here, or at least I think what you were trying to say, was that since these were insiders and they were acting on behalf of Madison, there was no true risk or transfer of ownership, therefore there was really no profit.

Mr. CLARK. That's correct.

Senator MACK. And if I can, what is the concern there? Explain to me why this is a concern to you.

Mr. CLARK. Well, in the first place, it is an account—was part of the accounting rules. One of the indicators of whether a transaction was truly an arms-length transaction so that you could recognize profit from that, from a sale like that, immediately is whether the buyer had a true financial interest in the property. And if they did not, you could not recognize the profit.

Senator MACK. So, Madison Financial should not have recognized that profit; is what you are saying?

Mr. CLARK. That's correct.

Senator MACK. What is the significance to Madison Guaranty as a result of the profit that they booked as a result of this sale?

Mr. CLARK. Well, Madison Financial is a subsidiary of Madison Guaranty. Profits that Madison Financial recorded flow through to the books and records of Madison Guaranty, and the profits ends up in Madison Guaranty's net worth. Again, that could be used to leverage, that is obtained savings so that you would have the cash to make more of these sorts of investments.

Senator MACK. How would Mr. McDougal benefit from that?

Mr. CLARK. Mr. McDougal?

Senator MACK. I guess most people might be thinking, well, the profits showed up in Madison Financial which then showed up in Madison Guaranty, but how did Mr. McDougal take advantage of that?

Mr. CLARK. In a couple of different ways. The first way is that moneys were funded out in the various land developments including Castle Grande to Mr. McDougal personally. The other way is that part of Mr. McDougal's compensation from Madison Guaranty, his bonus, was based upon the net income—excuse me, part of his compensation from Madison Financial was based upon the net income of the service corporation.

Senator MACK. So that would explain why they showed cost of sales, in relative terms, at very, very low cost. Or do you recall anything about the issue of cost of sales?

Mr. CLARK. Cost of sales was another way that they could show large profits on these transactions. Rather than recognizing the cost of the property they were selling, on a reasonable basis, they put off recognizing those costs until later, and so recognized very small costs as they sold the property. Therefore, if you have a lower cost, you can have—and you sell a piece of property, you can recognize a bigger profit.

Senator MACK. So Mr. McDougal, by showing a very, very low cost, was showing very high profits which increased his bonus from Madison Financial?

Mr. CLARK. That's correct.

Senator MACK. Did it at the same time then increase substantially the net worth of Madison Guaranty?

Mr. CLARK. Yes, it did.

Senator MACK. So, at this point, there's two comments that you are making; one is that those profits never should have been booked in the first place because of the insider transactions, and second that they were clearly overstating the profits—

Mr. CLARK. Yes.

Senator MACK. —both for personal gain, and for the gain of increasing the net worth and therefore being able to draw more depositors into Madison Guaranty?

Mr. CLARK. That's correct.

Senator MACK. Earlier in a discussion with respect to this—I think you—there was a list of potential insiders, I guess, that was put up, on which Mr. Clinton's name appeared on that list?

Mr. CLARK. Yes.

Senator MACK. And you made the statement that, you couldn't categorically say he didn't benefit from it because you didn't find any information. What I am curious about is, why did his name appear there in the first place? What was it that made you make up this list?

Mr. CLARK. As I said in my earlier testimony, because the field manager in Little Rock, Mr. Parr, had talked to me and told me of the relationship between Mr. Clinton and Mr. McDougal.

Senator MACK. Back to Mr. Fitzhugh for a moment. Did you become aware of—let me start over again. One of the comments that you made here this morning indicated that you thought that the management and/or directors were—these are my words now—interfering with the exam. And the way I took that was that they were keeping documents from you. In other words, they might keep a loan file until they had an opportunity to, let's say, adjust that loan file so it would look better in the eyes of the examiners; is that a fair conclusion?

Mr. CLARK. We suspected that was occurring.

Senator MACK. Were you aware or did you ever become aware, in Mr. Fitzhugh's case—again back to this nonrecourse—at least I am under the impression that the bank officers called Mr. Fitzhugh, asked him to allow them to rewrite the terms of the loan so that he, in fact, was personally liable. Are you aware of that at all?

Mr. CLARK. I don't believe we knew that during the examination, but I have heard it since.

Senator MACK. OK. So you don't have any direct knowledge of that, then?

Mr. CLARK. No, sir.

Senator MACK. But your fear was, during the exam, that you were not being given timely data, timely files, and that these files, in fact, were being changed, modified, added to during the process of the examination?

Mr. CLARK. Yes, that was our concern.

Senator MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Sarbanes.

Senator SARBANES. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

I will not spend all day on this, but I want to come back to it, and in general, understand why—and I appreciate—let me just preface my remarks because I am sure there are those who are going to say, well, it is that fellow from Connecticut and we know what he does on weekends and evenings, and that's why he is raising these issues.

But my colleague from Alaska will recall, I believe, in 1991 there was a move on the part of people on this side of the aisle to fund and hold hearings in the so-called October Surprise. I strenuously opposed those hearings and the funding for them when there were those who thought we ought to have some hearings about President Bush flying to Europe or whatever else, to meet with people.

So I think I have some credibility when it comes to my concerns about hearings and the length of time on them and whether or not they are ones that really ought to be pursued as strenuously as we go forward.

It was in 1987 when there were those, I guess, who were suggesting that we have extended hearings on Iran-Contra. And it was Minority Leader Bob Dole, I will quote him here, speaking about the Iran-Contra investigation which went on for 21 days, not 2 years. I quote him, "We may never have all the facts. There are too many other problems, domestic and foreign, that are not going to go away. They could not and should not be swept aside because of an obsession with this Iranian affair."

Mr. Chairman, my concern here is we have an Independent Counsel, a lot of this material, and whatever remains, can be handled by them. I am not suggesting we cut this off prematurely. But when I hear about an additional request for \$600,000 that may go on for additional months, I think it is warranted to start raising the concerns right now about why we can't have a schedule, that if it takes as we did back, I guess, was it—I am trying to remember now—2 years ago when we started here.

I realize it was difficult and painful, but we went about 10 hours a day, as I recall, long hours we sat there on the issues involving the first phase of these hearings, and we managed to get the work done. It seems to me, given things this Committee might otherwise do as well, with some good oversights over the Banking Committee, that we might find a way to expedite this process.

We have this week here, we have the two witnesses today, we have several tomorrow, one on Thursday. Now, we can't do anything about this week, I realize that, because invitations have gone out to try and get people here, but if we want to move this along, you can do it, I think, in a much more expeditious fashion than talking about going on for additional weeks and a lot more money.

Now as I understand it, we have approximately a quarter of a million dollars left, that hasn't been spent; some \$250-\$275,000. So, it seems we are talking about an additional \$600,000 above and beyond what we have that we haven't already expended. Again, I think some very important concerns get raised about that, and why we can't try to do with what we have here, to complete the work.

I still believe we could probably get it done if we put an intense amount of time in on this and meet our deadline. But I guess the report is due around the end of February. You may need an extra few weeks to get the report done, and I would understand that, I understand the snowstorm, and so forth; but it seems to me here, again, we are talking about a month's worth of work.

We did the first two phases of this hearing in 29 days. Now it seems to me we ought to be able to do this last phase in something like half that time. It would not be an unreasonable suggestion to make to try and work 5 days a week, if necessary, 8 or 9 hours a day, bring the witnesses in and wrap it up. Rather than trying, as I say, to go one or two witnesses a day, 2 or 3 days a week, if we are really interested in getting this done, I think we can do it, and I suspect we can do it within the financial constraints we imposed on ourselves when the original Resolution was adopted.

Mr. Chairman, we have heard alot about, of course, the billing records, and I am confident that many of my colleagues saw the article that appeared in the Sunday New York Times, maybe many didn't, but I think it is important to note. Again, I am not going to imply anything by this because we are not revisiting Iran-Contra.

But in 1987 requests were made for all documents of President Bush's Administration, all documents. Of course the Vice President knew at the time that he had maintained a diary. Now, you know, that diary all of a sudden miraculously appears after a second request in 1992, when an aide found it up in the personal quarters of the White House. September a request was made. Finally in December 1992, after the elections, that diary was turned over.

Now again, I am not going to sit here and imply, but I don't recall anybody on this Committee getting terribly exercised over the fact that the diary of the Vice President on an important Congressional hearing, that he knew existed in 1987 when the request was made, that shows up in the personal quarters in 1992 when a staff person finds it but isn't turned over to the lawyers until after the election of 1992. Where was the outrage being expressed then about a similar set of circumstances here?

The Clintons' staff find these papers. They immediately turn them over to the lawyers. The lawyers immediately notify the Committee and others of their existence. So there is, as you might understand, some sense of frustration on the part of those of us who find that in this particular case, there is a great sense of outrage yet in a similar fact situation, we didn't find any of that kind of frustration or concern being expressed.

So, again Mr. Chairman, I just find myself, when I hear that \$600,000 and months more work, I am sure again the Chairman is not going to be terribly surprised by my concerns about it when you consider the amount of time we have already spent on this, and my feelings that the work could be done in a lot more expeditious fashion.

I inquire of my colleague from Maryland, who has been involved in all of this, who may have some additional light to share on this matter, maybe some conversation I am not aware of has gone on. Our Counsel with the Majority staff, I haven't consulted people on my side before I made these comments here today. So maybe there are some things that are happening that I am not aware of.

But if not, I would like to know why we can't do work as we did a couple of years ago, when we went the 8, 9, 10 hours a day and completed those phases, difficult as it was, rather than this one or two witnesses a day, 2 or 3 days a week approach. So I would inquire of my colleague from Maryland if there is something going on that I am not aware of?

Senator SARBANES. First of all, I would say to the Senator from Connecticut, the Iran-Contra Committee held 44 days of hearings altogether; and in the last month, between July 7 and August 6, 1987, they held 21 days of hearings over that 1-month period in order to conclude its hearing schedule on August 6. The Committee was established on January 6, 1987, so they finished the hearings 7 months after its creation.

Now as of Friday, we will have done more hearings than the Iran-Contra Committee did. And yet we are now faced with a request by the Majority for another \$600,000 to carry on the inquiry, and with an indefinite extension of time. Of course, we've taken the view, which I think is well based, that there should be an intensification of the scheduling in front of us, and that we ought to work within the timetable given us by the Senate in the Resolution, and within the money that's been allocated for that purpose.

Frankly, I think we need to intensify the schedule. We have made that very clear to the Majority, and in very recent discussions, where we have tried to get some sense of what the schedule is going to be and what the universe looks like in terms of witnesses which looks very large indeed.

We've moved beyond the Foster papers and beyond the Washington phase, and we are now talking about the so-called Arkansas phase, which involves matters that took place in Arkansas 10 and 15 years ago. And, of course, that phase could go on forever, I assume, but I don't think a good public purpose is served by that.

I have been very candid in stating it, and it is something I feel keenly, that the more this extends into the election year, the more it will be perceived by the public that this investigation is being conducted for political purposes. We ought to seek to avoid that

and the way to do that is to intensify the hearing schedule, organize these witnesses, make use of past testimony that people have given in other fora, and move this thing along.

Now, I understand that the Majority has certain points they want to make. I think we ought to lay them out in a hearing, but not needlessly drag these hearings out. I think we ought to have more of a form to this, and a more intensification of the hearing program. Iran-Contra held 260 hours of hearings over a 3-month period. This Committee has held 180 hours over a 6-month period. I mean, there is a very sharp contrast, and in fact, there is even a contrast between some of the previous working periods of this Committee on this matter and the pace that's now here before us.

Senator DODD. Let me inquire as well. Today, in *The Washington Times*, there is a headline story that says,

Panel wants chance to question Hale, seeks extension. Republicans on the Special Whitewater Committee want to extend the February 29th cutoff date for the panel inquiries to give Members, among other things, a chance to question former Little Rock judge who law enforcement officials have described as the piggy-back for Arkansas' political elite.

I raise that point because it kind of goes to the heart of this. We have a memo, Mr. Chairman, that was sent to Mr. Chertoff, the Majority Counsel, from Mr. Ben-Veniste, in December, 2 months ago, specifically regarding Mr. Hale. In which it says,

After the meeting with David Kendall and Jane Sherburne, Chairman D'Amato asked me to work with you to begin the process of having David Hale appear for a deposition, you put it out to the Chairman and Senator Sarbanes, that if the Independent Counsel objects to Hale providing testimony to the Committee, as the staff has indicated it will do, the process may take some time.

The reason I bring up that memo in December is because had we started then, December—and they may have objected, but now we are being told we have to extend in February because it may take some time to deal with Hale; here's a request in December to deal with Hale, 2 months ago, or at least the observation we should start early, I guess, is a better way to put it, rather than request, an observation, better said. It wasn't a request to the Chairman but an observation we may have some problems getting to this.

So trying to move this along, that is my concern here, Mr. Chairman. Again, you have a difficult job, no one is arguing that, to manage a Committee like this, a Committee where you have the subject matter as intense as it is. There is a tendency to want to personalize, I'm not trying to personalize.

I feel when you have one, two, three witnesses a week, the request for \$600,000 more, months more of hearings, there are those of us here, as I say, I go back to 1991. I objected to the 1991 hearings. I saw that for what it was, in my view; now others thought there was great merit to it. I thought in 1991 it was nothing more than it was, an effort to embarrass through political hearings the Bush Administration with the October Surprise hearings, without any real shred of evidence that indicated the surreptitious flights the Vice President was supposed to have taken to meet with Iranian officials didn't exist. And to hold Congressional hearings at public expense, I thought was not worth it.

So as I say, I realize there will be those who will say the Senator from Connecticut is raising this because of other responsibilities. It is not the reason I am raising it here. If we are going on for weeks

more with this thing, it seems to me, when we have an opportunity—particularly when we are not voting. We have no votes here for almost another month. We don't have to be interrupted with 15-minute roll calls as we have had in the past. We could plow along beginning at 8 or 9 in the morning and finish this work.

The CHAIRMAN. If I might, I have obviously—

Senator DODD. I appreciate it, Mr. Chairman.

The CHAIRMAN. We have gone well over the allotted time, but I think it is important that my colleagues be given the opportunity to express themselves—their feelings and their opinions. Now let me say two things:

First, I recognize the very legitimate concerns that my colleagues have as it relates to the possibility of hearings being delayed, and intended or unintended consequences that may come as a result of that. Let me say to you, irrespective of what party or positions that you hold or I hold, I believe what it comes down to is we try to do the best we can in our capacity as Senators. Not as Republican, Democrat, or as it relates to the body politic and what we are experiencing.

If we could have moved forward expeditiously, we would have. I can only assure you that this Senator at no time has attempted to delay these processes. Indeed, I share a frustration and have shared that with the Ranking Member and others as it related to our cooperation that necessitated delays with the Special Counsel. That's a fact. So when it is not fair to compare a situation or where there was not a delay of 6 or 7 months occasioned because the Special Prosecutor and the Committee had agreed to work as we have, together. I am willing, at certain points, to push forward, provided that we do not jeopardize the Special Prosecutor's work.

Second, let me say and this is just by way of illustration and making a rather small point but it's a point, and I think it's important. The necessity of Mr. Clark and Ms. Pulcr testifying today was questioned and raised by Counsel, and I believe some of the Senators saying well, didn't they testify before the House, and indeed there's volumes, page 185 through 400 something, so over 200 pages of testimony that Mr. Clark participated in, he and our other witness.

And the question of well, are we just going to have a rehash of this whole thing, came up as it related to Castle Grande and the importance of Castle Grande, et cetera, obviously has become something that we are concerned about, and with, as it relates to various statements in testimony that have been given. I'm not going to characterize it by who or where, because that just intensifies the situation as it relates to this as political.

But the fact is that Mr. Clark did testify and was asked questions as it related to Castle Grande, but Senator in a very, very limited way. I will take the time, and it's about one page, so that we can—that was not examined. If we're going to look at the totality, it was barely touched.

Congressman ROTH. Mr. Clark, in your examination of Madison Guaranty you reviewed a project that I think was called Castle Grande?

Mr. CLARK. Yes, that's correct.

And the reason I bring this up is because it is disingenuous and not right to suggest that this Committee is attempting simply to

go over testimony that was elicited and duplicative, because we are not, I assure you. That may not say that in some cases we may not call the witnesses to amplify. In this case there was barely a mention of Castle Grande. It goes on:

Congressman ROTH. The project involved building houses in swamps; is that right?

Mr. CLARK. Well, certainly a lot of the land was low and a lot of it was swampy. That was part of the problem with building houses.

Congressman ROTH. Did you question the viability of the project?

Mr. CLARK. Yes, we did.

Congressman ROTH. What was the upshot of it?

Mr. CLARK. We classified assets related to the project. As I sit here, I can't tell you the exact amount but it was a substantial portion of the Madison Guaranty and financial investment in the project.

That's it. That's it.

Senator MURKOWSKI. Mr. Chairman.

The CHAIRMAN. You see, and by the way, I understand my colleague's question, if we went over the same old ground, I think it would be a good point. We will attempt not to go through witnesses who have testified or whose testimony that we have that we can put into the record. I'll attempt to minimize it, but I assure you, and I point this out by way of illustration, that is not why we are examining him in detail, for example, on other transactions in much greater detail than the House did. We're not going to look to duplicate it, but we are going to do it thoroughly, fairly, comprehensively, and as much as we can.

Now last but not least, the question of witnesses. We have submitted to Counsel for the Minority the potential of approximately 60 additional witnesses. I'm not saying that we're going to do all of them, but we have identified 60 witnesses, and that does not take into the question of dealing with those witnesses who the Special Prosecutor may want us to defer.

There's a trial going to go on in Little Rock, supposedly March 3rd or 4th, and we are very, very much concerned and we need some of those witnesses. To be candid with you, we will not be able to bring those witnesses in unless the Special Prosecutor agrees or unless we find some compelling reason and this Committee would be willing to vote to give some of these witnesses immunity.

I will discuss and I will ask Counsels to open up a dialogue with respect to what witnesses, if any, would we be willing to give immunity to. I have not approached that up until now for the very reason that I did not believe that my colleagues on the Minority particularly would be willing to grant immunity to witnesses. So if you want to explore that, I certainly will be willing to discuss that with you.

As you know, that is one of the areas in the Resolution when we constructed the panel that we were very much concerned about, and we would obviously, I think, have to consult with all of the Members of the body as it related to what cases, if any, would we grant immunity. So that is what has occasioned some of this delay.

Now, I have impinged upon the time of my friend and colleague.

Senator DODD. Mr. Chairman, could I just make one observation?

The CHAIRMAN. Yes.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Mr. Chairman, I would appreciate it if—I have been waiting a long time.

Senator DODD. I know, I just want to make one point, Frank.

Senator MURKOWSKI. I think this is a conclusion and the type of discussion that should take place in front of the Committee, but basically at the end when the Senators who have waited patiently to ask questions of the witnesses have that opportunity, because this could take a long time, but it is important.

Senator DODD. I've waited patiently but let me just say here—

Senator MURKOWSKI. The Senator from Alaska has waited patiently and he has heard from the Senator from Connecticut and I want to comment. The Senator of Connecticut has a good recollection, but a good deal of the time here has been spent debating how much time we are wasting as opposed to getting on with the witnesses and I have some questions for the witnesses.

Senator DODD. I appreciate that, and the only point I wanted to make is that I don't know how much our two witnesses are going to be able to tell us about Castle Grande. My suspicion is not a lot.

Senator MURKOWSKI. Well, let me try.

Senator DODD. My point is that a deposition of the witnesses by staff ahead of time would answer that question. These witnesses have not been deposed. So instead of holding a public hearing for a day with two witnesses, having staff over weekends or other time, could answer the question of whether or not they have something to tell us. Instead, we're going to spend a day.

The CHAIRMAN. Senator—

Senator MURKOWSKI. Hindsight is short.

The CHAIRMAN. One of the reasons we did not do that is to save time—we could have brought them in and taken a day for the deposition, reviewed the deposition, and then we would have brought them in. We were attempting to save some time and money. Because a good deal of the cost goes to the transcripts, not only of the public hearings but also with respect to the depositions, in producing them.

Senator Murkowski, you have waited patiently.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I think it's fair to say that this Committee has recognized the significance of Castle Grande as being a very, very complex issue representing some very, very questionable internal transactions and some loan document preparation that reflects on some answers that need to be determined by this Committee. Each time I come to this hearing process, I learn something new, something relative to either more questions being necessary to be pursued or events that seem to fall out of the sky like the White House discovery of the documents that had been missing for an extended period of time. We have had to accommodate the Special Counsel, in discovering these billing records that were missing for 2 years, that's put an additional consideration on certain questions. The Kennedy note delay, the subpoena, while that's separate, it still reflects on the mandatory responsibility that we have to proceed here, and I would like to ask a couple of questions of the examiners.

In your function as examiners for the Federal Home Loan Bank Board, your concern obviously is to protect the interest of the de-

positors. And as I understand it, the institution also was examined by State examiners. Do you have and did you evaluate the recommendations of the State examination for the S&L as a matter of review and can you highlight from recollection any of the exceptions that were noted in their examination, and did you share your examination with the State officials?

Mr. CLARK. Well, based upon my best recollection, I don't recall ever seeing an Arkansas State Examination Report for Madison Guaranty.

Senator MURKOWSKI. And does that imply that they don't do an examination?

Mr. CLARK. That may very well be true. I am not sure what exactly their procedures were, but in the case of Madison Guaranty, I don't recall ever seeing an Arkansas State report.

Senator MURKOWSKI. As a matter of course, do you make your examination available to the State?

Mr. CLARK. That would be—

Senator MURKOWSKI. In the sense of the State examiners.

Mr. CLARK. I myself don't do it, as an examiner-in-charge, but in the normal course what would happen would be the report, or at least its findings would be transmitted to State authorities.

Senator DODD. Frank, would you ask—did you read Beverly Schaffer's testimony?

Senator MURKOWSKI. Did I read—

Senator DODD. I just wondered if he had because you asked a very good question about whether or not they relied on the State, where she testified they always relied on Federal examinations and I just wondered if you had read your testimony.

Mr. CLARK. No.

Senator MURKOWSKI. Well, I'm sure that they do rely on Federal examinations.

Senator DODD. That's what she said.

Senator MURKOWSKI. But the question I had was whether the State ever did an examination, and we don't know that.

Senator DODD. We do know they didn't. She said they didn't.

Senator MURKOWSKI. Well, these gentlemen and the lady didn't address that.

Senator DODD. OK. I apologize.

Senator MURKOWSKI. If the testimony indicates that they did rely on the Federal Home Loan Bank Board, why then obviously the Federal Home Loan Bank Board's examination report fall short of a Cease and Desist Order on the first report to the Madison S&L. What did that basically say in the conclusion of your report?

Mr. CLARK. Of my 1986 examination report?

Senator MURKOWSKI. Yes.

Mr. CLARK. That Madison Guaranty was insolvent.

Senator MURKOWSKI. Was insolvent?

Mr. CLARK. Madison was insolvent. That there was a considerable amount of self-dealing and that the thrift had not been operated in a safe and sound manner.

Senator MURKOWSKI. Now when you say "insolvent," tell us a little bit about the relationship, how do you determine solvency? Is it capital and undivided profits, but in an S&L it's a little different.

Mr. CLARK. Well, it is basically the same. It is the net worth, the capital of the thrift. It would be the stock, the paid-in stock plus or minus any undivided profits, that is net income or loss that has happened at the institution.

Senator MURKOWSKI. Right. What was the date of the previous exam prior to the 1986 date roughly?

Mr. CLARK. My recollection is it was 1984.

Senator MURKOWSKI. In 1984. And did you or Ms. Pulcer do that examination?

Ms. PULCER. No.

Mr. CLARK. No.

Senator MURKOWSKI. You had that exam available to you as a reference when you did the 1986 exam?

Mr. CLARK. As I recall, we did.

Senator MURKOWSKI. Can you tell us or highlight what the 1984 exam suggested?

Mr. CLARK. Based upon my best recollection, and I have not seen that document in a very long time.

Senator MURKOWSKI. Right.

Mr. CLARK. What it indicated was that the books and records of Madison Guaranty were inadequate.

Senator MURKOWSKI. Were what?

Mr. CLARK. Inadequate.

Senator MURKOWSKI. Inadequate, in 1984.

Mr. CLARK. That particularly the underwriting of loans was not what it should have been, and I am not sure, it might have addressed insider transactions and conflicts of interest, but I am not positive of that.

I believe coming out of that examination was an agreement which we looked at at the beginning of the 1986 examination, we looked at it to determine whether Madison Guaranty had complied with the agreement, and they had not.

Senator MURKOWSKI. Is that your recollection, Ms. Pulcer?

Ms. PULCER. Yes, it is.

Senator MURKOWSKI. Well, when you enter into an agreement such as you indicated existed in 1984, don't you monitor whether or not that agreement is being adhered to as opposed to waiting 2 years, and isn't the institution required to report on corrective action taken during that time so you don't just walk into the institution 2 years later and find out they didn't comply?

Mr. CLARK. Normally, there are some monitoring provisions. I don't recall if there were or what those monitoring provisions were in terms of the agreement.

Senator MURKOWSKI. But it's customary that there be some kind of a monitoring situation so that you know that the institution is in compliance with the agreement. Is that not correct?

Mr. CLARK. That's correct, at least in terms of reviewing the financial reports that the institution submits and making periodic contacts with the management of the institution.

Senator MURKOWSKI. Was this done in the case of Madison between 1984 and 1986?

Mr. CLARK. I believe it was done by the Federal Home Loan Bank of Dallas based upon my best recollection.

Senator MURKOWSKI. And those records would be in existence?

Mr. CLARK. They were in existence at the time of the 1986 exam. I don't know whether they're in existence now.

Senator MURKOWSKI. You don't know why they wouldn't be in existence, do you?

Mr. CLARK. No, I don't.

Senator MURKOWSKI. I mean, these things are kept in files and the Resolution Trust would have them now?

Mr. CLARK. Well, normally they are kept in files. However, there was a destruction policy where you would normally destroy outdated documents. Whether these documents fell under that and were eventually destroyed, I don't know.

Senator MURKOWSKI. Now the purpose of examination is the protection of the depositors and to protect the insuring agency which insures the deposits, and that's your responsibility and you do the examination and you report to your chief your recommendations. Why wasn't action taken after the 1984 exam, prior to the 1986 exam, which resulted in a Cease and Desist Order? Did your chief examiner comment on the significance of the 1984 exam? And why wasn't there some action taken, if indeed the notations were such as to highlight irregularities that would necessitate an agreement and the agreement was evidently not monitored? Somebody in the organization—in the examination process seems to be falling short on their duty or follow-up and are exposing certainly the taxpayer to additional potential loss here.

Mr. CLARK. Well, I think that from the 1984 exam through the 1986 exam, there was this monitoring of financial information and perhaps contact with management. As to why there wasn't more aggressive action, my only understanding about that is that that is the reason all of us, not just the examiners at Madison Guaranty but all of the approximately 200 examiners from across the country were called into the Dallas bank district in 1986, is because they did not have the resources to take this more aggressive action for several of their institutions.

Senator MURKOWSKI. They didn't have the authority for a Cease and Desist Order?

Mr. CLARK. They had the authority but they did not have the resources to go out, find the facts and to make the necessary decision and to produce the Cease and Desist Order.

Senator MURKOWSKI. Mr. Chairman, I would like just a couple of more minutes because I think my time started a little late after the extended conversation.

Wasn't it a fact that Madison was operating in the relationship of advancing funds for the Castle Grande purchase to its wholly-owned subsidiary, that throughout that period of time, and you would have access to those records in your 1986 examination, was in excess of the 6 percent limitation, which was a violation of law?

Mr. CLARK. Based upon my best recollection, that would have been true.

Senator MURKOWSKI. That would have been true, but nothing was done about it during that time, but you would have access or somebody would, to the 6 percent limitation vis-à-vis the accumulation of the credits that had been advanced by Madison to its subsidiary?

Mr. CLARK. Let me make a distinction here, and it might go to answer your question. As I said, the monitoring that was occurring was based upon financial reports sent in, OK. Because this purchase we were talking about, these sales, were to straws, they were not recorded as being investments, really, of Madison Guaranty. They were recorded as loans. So the reports that were sent in were incorrect.

Senator MURKOWSKI. That's a violation of the law?

Mr. CLARK. That is. Had the reports been correct, I think, they may very well have exceeded the 6 percent limitation. Under—

Senator MURKOWSKI. Seth Ward was the straw person in this, and yet he was employed, as I understand, by the wholly-owned subsidiary of Madison. Now that should have alerted—and I know the scrutiny and investigative curiosity of examiners. You get a smell and you start moving and satisfy yourselves, and I mean, this should have stood out like that red light.

Mr. CLARK. Well, it did arouse our curiosity in 1986 and we did pursue it, but in order to do that you have to be on-site in an exam.

Senator MURKOWSKI. Well, you can make a special visitation if you have reason to believe that the reports are false or they are not forthcoming. Was there any effort along the way to put any dampers on your aggressiveness or your curiosity to pursue the Madison matter by any level of oversight, either by your head examiners or by a State authority or any other effort to this, what should have been a very aggressive process of making a determination of whether what you suspected in 1984 turned out to be a reality in 1986?

Mr. CLARK. I wasn't involved in the 1984 exam.

Senator MURKOWSKI. Yes.

Mr. CLARK. In 1986, there was no effort by anyone from the Dallas bank or anywhere in the Federal Home Loan Bank system at the time to restrict our investigation.

Senator MURKOWSKI. And was that true in your evaluation, Ms. Pulcer?

Ms. PULCER. Yes, it is.

Senator MURKOWSKI. Why weren't you more aggressive in the follow-up? I mean, you represent examiners but you have head examiners and you have previous examiners that did the 1984 report which alerted, if you will, your insuring agency to the fact that this institution was operating very questionably and proved in 1986 to be operating illegally. You have an obligation to protect the Government's interest and the depositors' interests. And while it's not your responsibility, it's certainly the responsibility of your agency, Mr. Clark.

Mr. CLARK. Again, I wasn't involved in the 1984 exam, and I was not involved after the 1986 exam closed. My only understanding of it, of the situation, is that the reason that an earlier examination that might have disclosed these problems sooner was not done was simply the lack of resources of the Dallas bank to perform examinations.

Senator MURKOWSKI. Who was your senior examiner that would have made the decisions to take action? Because obviously you are assigned to do an examination, you are not addressed to initiate an action. That's somebody else's decision.

Mr. CLARK. Again, I worked for someone in the Sixth Federal Home Loan Bank Board District, OK. That's Indianapolis. I didn't work direct—other than on the 1986 Madison Guaranty exam, I didn't work for anyone at the Dallas bank. Presumably, it would have been the management of the Dallas bank, the supervisory management of the Dallas bank.

Senator MURKOWSKI. All right.

Mr. CLARK. At some point, there was a reorganization of the system so that at prior to some point, perhaps during or prior to the 1986 exam, responsibility for supervision shifted from the Federal Home Loan Bank Board to the Dallas bank. Prior to that point, it would be the supervisory management of the Federal Home Loan Bank Board in the Dallas district.

Senator MURKOWSKI. My last question involves what you do when you do an examination. In 1986, you were looking at an institution that was in serious trouble, and you were looking at insider transactions, which I assume would lead you to look at virtually everything that might be inappropriate.

Now at that time the Rose Law Firm was on a retainer to Madison Guaranty, and I assume that recognizing at that time that the scam was clearly on, that Ward was a shell in a sense and that documents were still being drafted and, well, I guess the sale of Castle Grande took place in October 1985 and in May 1986. There were deeds drafted by the law firm covering at least a 22.5 acre parcel of Castle Grande. And these deeds were drafted by, as I understand it, Mrs. Clinton. Were you aware that the Rose Law Firm was clearly representing Madison and that if you look at whose interests they represent, whether they represent the interests of Madison or the interests of the purchasers of the property, which is the wholly-owned subsidiary of Madison, and the lawyer who is drafting the documents for the law firm is doing so—what does that lead you to do in your report? Do you write that up in your report? Do you imply that there's insider transactions or there's a questionable relationship? What do you do? Do you just ignore it, Mr. Clark?

Mr. CLARK. During the 1986 exam, I don't recall knowing that representatives of the Rose Law Firm drew up the documents of sale from IDC to Madison Guaranty or its straws. During the exam, we did know that the Rose Law Firm had done some work on Madison Guaranty, but I don't believe we knew they did that particular piece of work.

Senator SARBANES. Well, that's not a piece of fact. That's not the case, as a matter of fact. That's why you didn't know it.

Senator MURKOWSKI. Senator Sarbanes, I think there is still a question of whether that agreement was consummated or whether it was not consummated, but I think it's fair to say it was drafted.

Senator SARBANES. What deeds do you think were drawn up?

Senator MURKOWSKI. This is the 22½ acres that we're referring to with regard to the Castle Grande sale. This was the option agreement.

Senator SARBANES. Not a deed.

Senator MURKOWSKI. Well, all right. I stand corrected, the option agreement. But in any event, it was a document of some signifi-

cance relative to the process that was going on internally within Madison.

What did you suspect when you looked at the Madison mess? Obviously, they are loaning funds to their own subsidiary. You must have drawn some conclusions relative to the insider transactions, the irregularities, the illegal actions associated with the operation of this organization. And if you knew about it, obviously those insiders would know about it, would they not?

Mr. CLARK. Well, to the extent they engaged in the transactions, yes, they would.

Senator MURKOWSKI. To the extent they engaged in the transactions.

Mr. CLARK. I'm not sure all of the insiders knew about all of the transactions, but I'm sure they knew about the ones they were involved in.

Senator MURKOWSKI. Because there were many facets. There were research and regulatory examinations on water and sewer utilities on Castle Grande, there was research on the brewery, as I recall, that was done by the Rose Law Firm and some of its principals. And as you've already testified before the Committee that, for the most part, the institution had been for an extended period of time in violation of law relative to the 6 percent limitation on what its own subsidiary could hold; is that correct?

Mr. CLARK. Based upon my best recollection, that would have been correct.

Senator MURKOWSKI. Well, it seems to this Senator that anybody dealing with—particularly relatively closely and particularly the Rose Law Firm had to have some knowledge, they would have had to be blind not to know that there was some kind of a scam associated with the operation of the S&L; and particularly, Seth Ward's role, who is basically in the employ of the institution, which is the wholly-owned subsidiary of the institution. So you have a curious situation here, Mr. Chairman, where you have the Rose Law Firm representing Madison, Ward, who is the go-between, basically the recipient of the funds and employed by the Madison subsidiary, and I think it stretches the imagination to suggest that the law firm would not clearly see that there are substantial irregularities going on relative to the operation of the S&L.

So I think it would be interesting, Mr. Chairman, to have some understanding or explanation as to why there was not more aggressive action taken by the appropriate examiners as a consequence of the 1984 examination and the recommendations in that examination. Why reporting didn't take place and why it wasn't monitored in that timeframe from 1984 to 1986, because somebody clearly wasn't doing their job, and as a consequence it cost the taxpayers a pretty heavy hit here. And to suggest the law firm in a community, in that kind of an environment didn't have an idea of what was going on, I find just incredible.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Clark, are you sitting at the table here testifying that no monitoring of Madison Guaranty Savings & Loan took place after the 1984 exam in the way Senator Murkowski just suggested; is that your testimony?

Mr. CLARK. What I'm saying is there was, I believe, based upon my best recollection of documents I haven't seen in a long, long time, that there was some off-site monitoring being done. There would have been financial reports available, albeit incorrect ones, and some contact by supervisory authorities with the management of Madison Guaranty.

Senator SARBANES. Did you know there was a supervisory agreement between the Federal Savings & Loan Insurance Corporation and Madison Guaranty Savings & Loan Association?

Mr. CLARK. Yes.

Senator SARBANES. In the summer of 1984?

Mr. CLARK. Did I know that in the summer of 1984?

Senator SARBANES. No, did you know it here today?

Mr. CLARK. Yes, and I knew about it during the 1986 exam.

Senator SARBANES. Wouldn't that constitute monitoring?

Mr. CLARK. No. That says that is an agreement to——

Senator MURKOWSKI. Perform.

Mr. CLARK. Yes, thank you, to perform, that the Madison Board of Directors agreed to take certain actions, they agreed with the Federal Home Loan Bank Board as the supervisory authority. To monitor means to take a look at the thrift periodically and see how it is performing, to monitor—perhaps even to monitor compliance with that agreement.

Senator SARBANES. Now there's a memo from John Mitchell on this very subject, saying the SA advised that Madison's growth, investment strategy, and net worth compliance would be monitored closely, with reference to the 1984 supervisory agreement.

Mr. CLARK. I'm sorry, is this the document you are referring to, this April 3, 1985 memo from John Mitchell?

Senator SARBANES. Look on the last paragraph.

Mr. CLARK. I'm sorry, sir. I'm taking some time to look at the document because I have never seen it before. At least, I don't recall ever having seen it before.

Senator SARBANES. Well, you went in 1986 to do an examination; correct?

Mr. CLARK. Yes.

Senator SARBANES. You had not worked this case?

Mr. CLARK. Prior to 1986, no, sir.

Senator SARBANES. Or after?

Mr. CLARK. Or after the completion of the exam in September of 1986. No, sir.

Senator SARBANES. Were you aware that they then took Mr. McDougal out of any connection with Madison subsequent to 1986?

Mr. CLARK. I may have become aware of that in 1987. In 1987, I was called to Little Rock by the FBI, and at that point looked at correspondence that had occurred, correspondence and other supervisory documents that had occurred since the end of the exam. So I'm sorry, could you——

Senator SARBANES. What follows from that?

Mr. CLARK. Well, at that point I think I did learn that McDougal was out of the institution. At the end of the 1986 exam, I don't believe he was.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me clarify one thing in connection with your cooperation with the House Committee which investigated this very same area. In addition to your public testimony, you were interviewed at some considerable length by the staff of the Committee, correct, Mr. Clark?

Mr. CLARK. That's correct.

Mr. BEN-VENISTE. And indeed for hundreds of pages which have been provided to us by the RTC, you answered questions about Castle Grande, other matters that you observed during your examination. You're aware of that. The Committee may not be, or some Members of the Committee may not be.

Mr. CLARK. Are you referring to the interview by the RTC?

Mr. BEN-VENISTE. The interview by Pillsbury, which was produced to the RTC.

Mr. CLARK. As I said earlier, I haven't seen the transcript but yes, I was interviewed.

Mr. BEN-VENISTE. Quite extensively?

Mr. CLARK. As I said, my recollection is it was for 2, 3 hours.

Mr. BEN-VENISTE. We have the transcript, and for those on the staff who haven't seen it, it's been designated Exhibit 2, 0658651 through, I can't read the end of it but it looks to be about 300 pages worth.

Let me ask you this: Are you familiar with the Pillsbury Madison & Sutro Report that has been made a part of the record of this Committee? It's dated December 28, 1995.

Mr. CLARK. I learned of its existence through the newspapers. I have never read the report.

Mr. BEN-VENISTE. Well, it would be enlightening, perhaps, because it goes through the entire chronology of the regulation of Madison Bank. And let me help you to see whether this refreshes your recollection.

The CHAIRMAN. I'm going to admonish Counsel.

If you want to refer the witness to a document, let him have a copy of it. I don't think this witness or anybody else has to be—you have to say, "It would be enlightening." I honestly believe, and I want to give great latitude to Counsel and other Senators, that it's absolutely inappropriate to approach it in that manner, this is not a hostile witness. He's responded to questions that other Senators on both sides have asked forthrightly; when he can't remember, he says he can't remember. Now, he's testified that he hasn't seen this report. Why would you want to tell him that "it would be enlightening" as it relates to this report?

Mr. BEN-VENISTE. Well, I would say—

The CHAIRMAN. If you want to give him a copy and ask him a question as it relates to a particular area, or if you give him the page and refer to it as refreshing something that he may have done or testified to or said, that's fair, but let's try and do it—and I don't say this because this is a witness who comes in that we expect a certain testimony one way or the other. He was the examiner. He's testifying to the best of his ability. He's not on trial. No one is on trial. So let's treat him with a certain amount of respect.

Senator SARBANES. Mr. Clark, I don't want you to think you haven't been treated with respect. I think you've been treated with

respect by everyone here today. Let's send a copy of this down to him. I want to ask him some questions about it.

Mr. BEN-VENISTE. If I may respond, Mr. Chairman, I wasn't suggesting that Mr. Clark should have seen the report. I'm only suggesting that it would be enlightening to those who have not taken the time to read this report, because all of these events are laid out quite specifically in the report; and it is enlightening to those who have not had the opportunity to review it in any detail to see that all of these events, starting in 1984, are set forth with particularity in the Pillsbury Report for which the Government spent, we are told, \$3.8 million.

The CHAIRMAN. They didn't get their money's worth, I can tell you that.

Senator MURKOWSKI. Mr. Chairman, may I interrupt here?

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. What disturbs me about this whole process and what we have learned today, and these examiners obviously have an expertise and a know-how to proceed when there's irregularity, so how can the Rose Law Firm not know the troubles, the corruption that was going on in Madison when Seth Ward, who was obviously the straw man, it was no secret, was Webb Hubbell's father-in-law and Webb Hubbell was a senior partner at the Rose Law Firm? Now let's quit kidding ourselves. This isn't New York City. This is a relatively small law firm. Lawyers talk. And this was going on 2 years before.

Senator SARBANES. Mr. Clark, do you know about any of these things that Senator Murkowski just mentioned?

Mr. CLARK. I'm sorry, I didn't—I was busy looking at the document. I thought you were going to question me on it. I'm sorry.

Senator SARBANES. I want to find out what your knowledge is. Let me ask you a couple of questions here. Would you turn to page 7 of this document. At the bottom of page 7, it says,

In January 1984, the Federal Home Loan Bank Board started a special limited examination of Madison Guaranty.

Then it goes on from there, discusses that and some of the things that were happening. And then it says in the middle of that page,

The 1984 examination led to a supervisory agreement, to which Madison Guaranty's Board of Directors consented in July 1984. The supervisory agreement required compliance with net worth and affiliated party transaction regulations, and better policies and procedures.

In October 1984, Jim and Susan McDougal resigned as directors and officers of Madison Guaranty. They remain majority shareholders; Jim McDougal remained chairman and president of Madison Financial until July 1986; and by most accounts other than his own Jim McDougal continued to dominate Madison Guaranty.

In March 1986, the Federal Home Loan Bank Board began another examination of Madison Guaranty.

Now that's the one you were involved with; is that correct?

Mr. CLARK. That's correct.

Senator SARBANES. All right.

The problems recognized in the 1984 report of examination not only remained but had become much worse. On June 19, 1986, the Federal Home Loan Bank Board wrote to the Board of Directors of Madison Guaranty to report on its interim findings. This letter alleged a violation of the July 19, 1984 supervisory agreement and noted Madison Guaranty's continued failure to comply with the Federal Home Loan Bank Board's net worth requirements.

On July 11, 1986, the Federal Home Loan Bank Board called Madison Guaranty's Board of Directors to a meeting in Dallas. The directors were instructed to remove

Jim McDougal as chairman and president of Madison Financial (he had resigned his Madison Guaranty offices in 1984) and John Latham as chairman of Madison Guaranty. McDougal and Latham resigned. A month later, the Federal Home Loan Bank Board entered a Cease and Desist Order (C&D) against Madison Guaranty.

Now this is the Pillsbury Madison & Sutro Report about what took place, and I guess the reason I'm putting the question to you is it seems to me in previous answers at the table, either you weren't aware of this chronology or it wasn't being brought forward in response to questions.

As I understood it, you said nothing happened after the 1984 examination and I wasn't clear if you said nothing happened after the 1986 examination or that you weren't certain about, or didn't know about it.

Mr. CLARK. I was basing my answer upon my recollection. Now, I was not involved prior to—I personally was not involved prior to the 1986 exam and had only limited involvement thereafter. I certainly was not involved in the resolution of the Madison Guaranty supervisory problem.

Based upon my best recollection, I frankly—I testified that yes, there probably was some limited amount of monitoring between the two exams, which may or may not have been—obviously perhaps was not entirely effective.

Senator MURKOWSKI. Senator Sarbanes, I'm curious to know, are you referring to the report that was done by Pillsbury Madison & Sutro in December 1995?

Senator SARBANES. That's right.

Senator MURKOWSKI. That was, of course, done after Madison and the action by—Mr. Clark and his team of examiners had already completed their report. So this would not have been relative to their examination.

Senator SARBANES. No, this is Pillsbury's setting out the historical background of Madison Guaranty Savings & Loan and the regulatory history. This is the regulatory history. Questions were being put to Mr. Clark which suggested that nothing was done after the 1984 examination and it wasn't quite clear what had been done after the 1986 examination. And I'm just trying to clarify that for the record, because regulatory steps were taken in both instances.

Senator MURKOWSKI. Well, I am not going to answer for the witness, but by the same token, an agreement that was initiated in 1984 and not monitored with specific compliance and changes clearly there wasn't any action that was taken relative to correcting the situation. And it behooves the Federal Home Loan Bank Board to mandate that those periodic reports show advancement and progress. Otherwise, they are ignoring their obligation, and clearly Madison is in violation of the law.

Senator SARBANES. We can bring in some—

Senator MURKOWSKI. This is somebody's interpretation of the Federal review.

Senator SARBANES. Right.

Senator MURKOWSKI. Whether they have had the benefit of the actual examinations, I don't know.

Senator SARBANES. Well, I would hope so. We paid \$3.8 million for this study. The point is that Mr. Clark was asked questions which presupposed that nothing had been done, and Mr. Clark in

his answers, in effect, accepted the assumption that nothing had been done, and things had been done.

Now, whether—

Senator MURKOWSKI. They weren't adequate, certainly, and I question whether they were done.

Senator SARBANES. Whether they were adequate is a different question, but that doesn't address Mr. Clark's testimony. He does not really know about that.

Mr. CLARK. Pardon me. Just so I don't have to correct the record again, that was not my testimony. I did say there was some limited amount, perhaps, but based on my recollection, some monitoring of Madison Guaranty between the 1984 exam and the 1986 exam.

The CHAIRMAN. You said specifically there was some off-site monitoring.

Senator SARBANES. What did you say about what took place after the 1986 exam?

Mr. CLARK. I said that—your question, I believe, if I recall it, was did I know that McDougal and several of the officers had been removed. My answer was that they had not been removed at the end of the 1986 exam. However, when I was in Little Rock in 1987, I may very well have learned that they had been removed.

Senator SARBANES. They were taken out as officers and directors in 1984. They were thrown out of the S&L altogether in 1986.

Mr. CLARK. McDougal as the Madison—excuse me. The Pillsbury Madison Report says McDougal was removed as President of Madison Guaranty. He remained as President of Madison Financial.

Senator SARBANES. Right.

Mr. CLARK. All right. The reason is, as I recall the 1984 report pointed out, his holding the office of President violated some specific rules regarding conflicts of interest. In order to not—to cease violating those rules, he resigned as President. He remained at the institution as President of Madison Financial. He was not removed from that office until after the close of the 1986 examination.

Senator SARBANES. That's right. And there was a Cease and Desist Order, was there not, in 1986?

Mr. CLARK. Yes, it was agreed to during the 1986 exam.

Senator SARBANES. That's right.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Mr. Clark, normally, the results of an examination by the Federal Home Loan Bank Board would be kept confidential, isn't that right, back in 1986?

Mr. CLARK. That's correct.

Mr. GIUFFRA. In fact, isn't it, I believe, a crime to release the actual results of the examination to someone outside of the bank?

Mr. CLARK. The law requires that release of an exam report be restricted.

Mr. GIUFFRA. And you're not supposed to disseminate even—for example, if you're a bank regulator, the results of the exam to persons outside of either the regulatory agency or the bank; right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. So it would be wrongful for a bank regulator to provide information to, say, the general public about the results of an examination of an S&L?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Ms. Pulcer, you would agree with that?

Ms. PULCER. Yes.

Mr. GIUFFRA. Bank examinations are conducted in very confidential circumstances; right?

Ms. PULCER. That's correct.

Mr. GIUFFRA. That's in part because people are concerned about runs on banks if people find out that a bank is in trouble?

Ms. PULCER. I would assume so, yes.

Mr. GIUFFRA. Now, you've examined banks, Mr. Clark, in a number of places in the country. What is your experience with regard to the interaction between a State bank regulator and the Governor that appointed that State bank regulator?

Mr. CLARK. I am not sure I have any experience in that interaction.

Mr. GIUFFRA. Are you aware of any instances in which a State bank regulator would have tipped off the Governor's office with regard to how an examination was proceeding?

Mr. CLARK. No, I know of no such instance.

Mr. GIUFFRA. Do you think that is something that a State bank regulator should do in the normal course, based on your experience?

Mr. CLARK. I don't—as I sit here, I can't think of a reason why that should occur.

Mr. GIUFFRA. Ms. Pulcer, can you think of any reason why a State bank regulator or S&L regulator should tip-off a Governor's office about the results of an examination while the examination is in process?

Ms. PULCER. I have no experience in this regard with State regulators and the structure within the State, the reporting structure between the State supervisor and the governorship.

Mr. GIUFFRA. Now, going back to the role of Ms. Bassett, I believe, Mr. Clark, you testified earlier, about 3 hours ago now, that you thought that Ms. Bassett had a conflict because she had done some legal work for Mr. McDougal. Do you recall that testimony?

Mr. CLARK. Yes, I do.

Mr. GIUFFRA. I would like to put up on the Elmo the document bearing Bates number CCBW 884. This is a document that the Committee received recently. You were never asked about this particular document during your House testimony, were you, sir?

Mr. CLARK. Not that I can recall, no.

Mr. GIUFFRA. Let me just give you some background on the document. This is a document that Ms. Bassett, who was the Securities Commissioner and also the head S&L regulator in Arkansas, sent to a Mr. Sam Bratton, who was an adviser to Governor Bill Clinton. This was sent on July 2, 1986. Now, this would be prior to the meeting that was held on July 11, 1986 in Dallas of the Federal Home Loan Bank Board; correct?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Your exam was still in progress on July 2, 1986; correct?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Were you aware of the fact that—let me just read the note into the record. It says, "Madison Guaranty is in pretty serious trouble. Because of Bill's relationship with McDougal, we

probably ought to talk about it." Did Ms. Bassett ever advise you that she had communicated to the Governor's office that Madison Guaranty was in pretty serious trouble?

Mr. CLARK. No, she did not.

Mr. GIUFFRA. Was that something you would have liked to have known in advance of the July 11, 1986, Federal Home Loan Bank Board meeting?

Mr. CLARK. It might have been interesting.

Mr. GIUFFRA. Especially in view of the fact that you thought Ms. Bassett had a conflict?

Mr. CLARK. Yes. However, I don't know if it would have changed the outcome of the meeting.

Mr. GIUFFRA. Now, you had indicated in questioning by, I believe it was Mr. Ben-Veniste, and there was a document that was put up, indicating that you thought that Governor Clinton might be a potential insider in the course of your examination?

Mr. CLARK. Yes, I recall the document.

Mr. GIUFFRA. And I believe you testified that you spoke to Mr. Parr in March 1986. He was the person who was the field manager of the Little Rock Federal Home Loan Bank Board's office?

Mr. CLARK. Yes, he was, I believe, one of two field managers in that office.

Mr. GIUFFRA. Mr. Parr had indicated to you that Jim McDougal had ties with a number of prominent officials, public officials, and elected officials in Arkansas. Am I right about that?

Mr. CLARK. Yes.

Mr. GIUFFRA. In fact, he told you that McDougal was a friend of Governor Clinton?

Mr. CLARK. Yes, he did.

Mr. GIUFFRA. You also had some understanding that McDougal and Clinton might have been business partners in some venture?

Mr. CLARK. I thought that might be the case, but I am not absolutely sure about that.

Mr. GIUFFRA. Would it be proper for an S&L regulator to tip-off someone who had a business relationship with the head of an S&L, the fact that the S&L was in pretty serious trouble?

Mr. CLARK. I don't know if it was improper; however, it certainly has an appearance of a conflict.

Mr. GIUFFRA. Isn't it correct that one of the reasons why you want to maintain the confidentiality of bank examinations is because you don't want to tip-off insiders of how the examination is progressing; isn't that right?

Mr. CLARK. No. Let me make sure I'm understanding your question. What your question is, is the prohibition against disclosing the contents of an examination report—

Mr. GIUFFRA. There clearly is a prohibition on that, you would agree?

Mr. CLARK. Yes. Is that in order to limit information to insiders during the exam? No. Obviously, the report is prepared at the end of the exam.

Mr. GIUFFRA. But you don't tip-off insiders as to how the exam is progressing; isn't that right?

Senator SARBANES. On the tip-off of insiders point, why don't you give Mr. Clark the letter that's referred to in this note so he doesn't

catch himself out. He ought to see the letter that was sent to the directors of Madison.

The CHAIRMAN. The attachment.

Mr. GIUFFRA. Do you have anything to add to your testimony after seeing that letter?

Mr. CLARK. No, I am familiar with the letter.

Senator SARBANES. Do you understand what the letter is?

Mr. CLARK. It is a letter from the authorities of the Federal Home Loan Bank Board dated June 19, advising the Board of Directors of Madison Guaranty Savings & Loan Association of the general gist of the exam findings to date and asking them to take certain actions.

Senator SARBANES. It would indicate they were in pretty serious trouble, wouldn't it?

Mr. CLARK. Yes, it would.

Senator SARBANES. So where does the tip-off come if the directors have already gotten this letter?

Mr. CLARK. The director—well, the management of Madison Guaranty received the letter. I'm not sure whether it was given to all of the directors, some of the directors or not.

Mr. GIUFFRA. But one point, just to be clear about this, with regard to a bank examination report and the results of an examination, the directors are not allowed to disseminate the results of that examination outside the bank or the S&L; isn't that right?

Mr. CLARK. Yes, the rule applies to them as well.

Mr. GIUFFRA. Ms. Pulcer, we sort of tried to get into this before and didn't have enough time. With regard to the meeting on July 11, 1986 in Dallas of the Federal Home Loan Bank Board, you attended that meeting; correct?

Ms. PULCER. That's correct.

Mr. GIUFFRA. And you took notes, fairly extensive and copious notes of the meeting?

Ms. PULCER. That's correct.

Mr. GIUFFRA. Ms. Bassett, the S&L supervisor in Arkansas, did not have any comments to make during the meeting; correct?

Ms. PULCER. To the best of my recollection, that's true.

Mr. GIUFFRA. Why don't we just have you read into the record the highlighted portion in yellow and just tell us what you recall about that exchange during the meeting.

And, I guess, is the comment your comment? That would be on page 1398 of your notes. If you could just read into the record beginning "Faulk asks."

Ms. PULCER. "Faulk asks Beverly Bassett if she wants to say anything. Bassett, I have no comment." Comment, this is my personal comment, "Strange, Faulk asked for her comments. Bassett's silence interesting."

Mr. GIUFFRA. What did you mean by that comment that you made in your notes during the course of this meeting?

Ms. PULCER. That comment was my personal observation. I would have expected the State Supervisor to make a comment at that point in the meeting whether she concurred or had any other statements to add.

Mr. GIUFFRA. That's based on your experience in attending similar meetings in the past?

Ms. PULCER. At this point, I don't recall as I had ever attended a board meeting with another State regulator, or with a State regulator.

Mr. GIUFFRA. Mr. Clark, what did you think about the fact that Ms. Bassett did not have any comment to make at this point in the meeting? Did you find it interesting as well?

Mr. CLARK. I thought it was a little odd. I, too, would have expected her to say something in support of the actions that the Federal Home Loan Bank Board supervisory authorities were taking.

Mr. GIUFFRA. We just gave you a copy, Mr. Clark, of a document that bears Bates number DKSJN 29010. It is a bill that was discovered in the White House residence I believe on January 4 of this year, and it is a bill of the Rose Law Firm for legal services that were rendered through January 30, 1986 by H.R. Clinton, T. Thrash, P. Donovan, K. Sheman, and J. Birch, and it relates to a matter known as IDC. Now, in the course of your work as a banker examiner, you have probably reviewed legal bills?

Mr. CLARK. To some limited extent, yes.

Mr. GIUFFRA. Just looking at this bill and trying to ascertain what the role of the Rose Law Firm would have been with regard to IDC, we've had testimony from members of the Rose Law Firm, was also the Castle Grande transaction, but in this bill, which was for \$4,670, the Rose Firm billed for "Reviewing contract for sale." What would reviewing contract for sale constitute, in your view?

Mr. CLARK. I presume they would be reviewing a contract for sale to see that it was a legally valid document and in the best interests of Madison Guaranty.

Mr. GIUFFRA. And then attending the IDC board meeting, that would have been the board meeting whereby IDC sold the property to Mr. Ward and also to Madison Financial?

Mr. CLARK. I'm not sure. I don't know.

Mr. GIUFFRA. What about reviewing a title commitment?

Mr. CLARK. I don't know what the Rose Firm did in this case. Generally what attorneys do in loan closings or may do in loan closings is to review legal documents, including title commitments, to see that Madison Guaranty's lien is a valid first lien.

Mr. GIUFFRA. Now, in this particular instance also the bill is for attending the closing. Normally when you attend a closing and you are a lawyer, aren't you expected to ascertain whether the transaction is in compliance with State and Federal law? I mean, that is one of the reasons people hire law firms to attend closings and review documents, isn't it, sir?

Mr. CLARK. Lawyers may do different things at different closings. In some cases, they conduct the closing; in other cases, they are there simply to advise their clients.

Senator SARBANES. Are you a lawyer yourself, Mr. Clark?

Mr. CLARK. No, I am not. I am only speaking as an examiner and as someone who has had some experience in real estate transactions.

Mr. GIUFFRA. We have a number of things to go through, but just one quick thing. With regard to the feasibility study that was discussed earlier in your examination, I would observe that that feasibility study was dated November 1986, which was after your examination was concluded; correct?

Mr. CLARK. That's correct.

Mr. GIUFFRA. So the feasibility study should have been done at the time of the acquisition of the land, prior to the acquisition of the land, not more than a year later; right?

Mr. CLARK. That's correct.

Mr. GIUFFRA. That would have been the proper banking practice?

Mr. CLARK. That's correct.

The CHAIRMAN. We're not going to start another line.

Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Do you happen to know, Mr. Clark, whether Ms. Bassett, the Securities Regulator in Arkansas, had discussed prior to the Bank Board meeting about which Ms. Pulcer's notes were mentioned, whether Ms. Bassett and Mr. Faulk prior to that meeting had had extensive discussions about what would occur?

Mr. CLARK. I do know there was some contact between the Federal Home Bank of Dallas and Ms. Bassett. The extent of those contacts or who participated I do not know.

Mr. BEN-VENISTE. Ms. Pulcer, do you happen to know whether Ms. Bassett, as she testified here before this Committee, had discussed with Mr. Faulk the problems at the bank and the action that the Bank Board would recommend prior to the meeting?

Ms. PULCER. I'm sorry, what is your question? Am I aware—

Mr. BEN-VENISTE. You made an observation in your notes that you thought it was odd that Ms. Bassett had not spoken up. Did you happen to know that Ms. Bassett had discussed with Mr. Faulk what the action that was recommended would be at the meeting?

Ms. PULCER. I was not aware of the extent of her discussions with Mr. Faulk, if any.

Mr. BEN-VENISTE. Right, and if, in fact, she and Mr. Faulk had discussed the matter extensively and were in agreement, then the fact that she didn't speak up would be more understandable, would it not?

Ms. PULCER. Your question is if they had had prior discussions before this meeting—

Mr. BEN-VENISTE. Right.

Ms. PULCER. —her lack of comment would not seem unusual?

Mr. BEN-VENISTE. Right.

Ms. PULCER. Perhaps.

Mr. BEN-VENISTE. Indeed, Mr. Faulk has made a statement which has been provided to this Committee wherein he said, referring to Ms. Bassett, at page 8, "She acted responsibly at all times and I don't see how anyone could say, that knew the history of this case, or who would look into the history of this case, could say that she acted irresponsible or delayed or drug her feet in any manner whatsoever." Do you have any reason to take issue with Mr. Faulk's comment about Ms. Bassett's performance?

Ms. PULCER. No.

Mr. BEN-VENISTE. And on the issue that, Mr. Clark, I asked you about earlier, Mr. Faulk has given this opinion on the question of the \$60 million loss, "Had it been timely acquired," meaning the Madison Savings & Loan, "Had it been timely acquired, it is my

opinion that whatever the ultimate loss is, it could greatly have been curtailed, by the taking of more timely action." Now, do you agree with that assessment?

Mr. CLARK. Let me make sure I understand what you are asking. The \$60 million loss you referred to is the ultimate loss of the RTC?

Mr. BEN-VENISTE. That's right.

Mr. CLARK. And you are asking—and Mr. Faulk has said that had the——

Mr. BEN-VENISTE. Had the savings and loan——

Mr. CLARK. —had the RTC or the Dallas bank or the FSLIC, at some point, earlier than——had closed Madison Guaranty earlier——

Mr. BEN-VENISTE. Right.

Mr. CLARK. —would the loss have been reduced?

Mr. BEN-VENISTE. Correct.

Mr. CLARK. Yes, it would have.

Mr. BEN-VENISTE. He said that the ultimate loss would have been greatly curtailed. Do you agree with that?

Mr. CLARK. I'm not sure about the extent. It would have been reduced, depending upon the time period, the timing of an earlier takeover, it would have been reduced to a greater or lesser extent.

Mr. BEN-VENISTE. She recommended, referring to Ms. Bassett, she recommended that the Federal regulators take over the bank in 1987. It was acted upon by the Federal regulators in 1989, so it is a period of something less than 2 years.

Mr. CLARK. Again, I don't know when the losses accrued through time. Had Madison Guaranty been closed sooner, the loss would have been less. How much less, and at what time for a particular time of closure, I am not sure.

Mr. BEN-VENISTE. Who is Mr. Faulk, do you know?

Mr. CLARK. Mr. Faulk was one of the supervisory agents of the Dallas bank.

Mr. BEN-VENISTE. Was that the Ninth District?

Mr. CLARK. I believe so.

Mr. BEN-VENISTE. That covered Arkansas and Texas; correct?

Mr. CLARK. It may have covered other States, but yes.

Mr. BEN-VENISTE. Now, I put before you a statement of James Barth and Dan Brumbar, prepared for the Committee on Banking and Financial Services of the U.S. House of Representatives, and submitted August 7, 1995. And I draw your attention to page 15 in the middle of the page. Are you with me?

Mr. CLARK. Yes.

Mr. BEN-VENISTE. Where it says,

At year end 1987, there were 186 institutions in the Ninth District reporting insolvency based on Generally Accepted Accounting Principles, or GAAP. The institutions had \$60 billion in assets and were reporting negative tangible capital of \$16 billion and negative income of \$7.3 billion. At this time, Madison's \$111 million in assets represented $\frac{2}{100}$ of 1 percent of the total assets of insolvent institutions in the Ninth District, and its \$12 million negative capital represented $\frac{2}{1000}$ of 1 percent of the total negative capital reported in that district.

Do you have any reason to take issue with that assessment?

Mr. CLARK. I haven't check the numbers, but it looks reasonable.

Mr. BEN-VENISTE. Did you recommend closing Madison after your 1986 audit?

Mr. CLARK. It wasn't my position to make that kind of recommendation.

Mr. BEN-VENISTE. I am not suggesting that it was, sir. But I am asking you, for clarity of the record, whether finding the irregularities that you found, it was your position and your recommendation that the bank be taken over by Federal regulators?

Mr. CLARK. At the time, that would have been the best solution. However, at the time, as I alluded to in my earlier testimony, there was a shortage of resources. What we did, as far as issuing a Cease and Desist Order and taking the actions we did, I think were the best, given the resources we had.

Mr. BEN-VENISTE. And that goes to the question of the loss that was incurred ultimately, between the time when the problems were identified and Ms. Schaffer and others came to the conclusion that the savings and loan might be taken over, the fact that it wasn't was a function of lack of resources by the Federal authorities at that point, and more pressing problems?

Mr. CLARK. That was my own view that I put forward at the time; and the others involved in the process may have had different views, but certainly, I would say that lack of resources was a large factor.

Mr. BEN-VENISTE. Let me refer you to——

The CHAIRMAN. Mr. Ben-Veniste, I know it is on your time. I am going to ask them to suspend the clock for a moment because I would like to make an observation.

First of all, Mr. Clark, let me tell you, I think you have testified to the best of your ability, and I think you have done your job as admirably as anybody could. But, you see, one of the things that disturbs me is when you—and maybe you did or didn't identify the transaction at that point in time to the extent that it did—and this is the first time I have seen this. I have heard about these transactions, but they have never been broken down. And as the Madison Financial Corp., October 25, that little thing with the arrows going, where it shows 35 acres——

Senator SARBANES. Why don't we finish ours——

The CHAIRMAN. I will go back. It goes to the business of when you close down, when you don't close down, whether they have enough resources. I guess you had limitations because they didn't have resources there to do this. We had discussed this on this Committee, how much money we should make available for closing down these institutions.

But when there is a transaction, which is as transparent as this Tucker deal, where he buys 35 acres, supposedly for \$125,000, that was the cost, and the bank gives him \$260,000. When you saw something like that, that's clearly illegal, clearly grotesque, clearly beyond the pale of any kind of acceptable conduct; would you go to your boss and say, "Hey, let me tell what you they are doing here, they are taking property?" If you admit it was worth \$125,000, and it probably wasn't worth anywhere near \$125. These guys buying it, and the bank president's wife gets a commission of \$12,500 on top of that. Now, wouldn't that call for some action to remove the president and the operating officers of that bank? I mean, that's the question I have.

Mr. CLARK. In terms of telling my boss, that is the supervisory authorities in Dallas, what this particular transaction was, these particular facts were brought forward in an interim report to the supervisory authorities in Dallas.

The CHAIRMAN. It was?

Mr. CLARK. Yes.

The CHAIRMAN. And do you recall any conversation that you had with them? Because you couldn't find many kind of transactions like this. In your whole banking experience, have you found many like this?

Mr. CLARK. No, sir.

The CHAIRMAN. This is incredible, I never heard of such blatant robbery. So what happened when you went to the boss and told him, what did he say?

Mr. CLARK. Well, you have to understand, this is one among many, OK. Even when I reported it for the first time to the Dallas bank, it was one among many. Ultimately, through the Cease and Desist Order and through supervisory contacts with the people at Madison Guaranty, the officers were removed.

The CHAIRMAN. I thank my colleagues for giving me the time. I think that goes back to what Senator Murkowski and others were saying, notwithstanding lack of resources, when you had a pilferage going on in such an open, notorious manner that the examiners have identified, it seems to me that the guys in Dallas certainly should have moved with much greater speed. They should have thrown them out, not ultimately in 1987—they should have thrown them right out. This is incredible. Again, I thank my colleagues for giving me the opportunity of making this observation.

Senator SARBANES. Mr. Chairman, over 50 percent of the loss to the Federal Insurance Fund came from institutions in Texas, I might observe; some of them in the amounts of hundreds of millions of dollars.

The CHAIRMAN. I understand that. I am suggesting that the fellows down there should have moved with greater speed. It seems to me that kind of an action would have brought about some more definitive action.

Senator SARBANES. Go ahead, Richard.

Mr. BEN-VENISTE. Mr. Clark, following along in the Chairman's observation, have you had the opportunity to read the literature concerning the S&L crisis, the books that have been written on the size of the losses due to inside deals, and flipping transactions, and so forth?

Mr. CLARK. I have read some of it at least.

Mr. BEN-VENISTE. There are banks where literally tens of millions of dollars on each transaction were lost; isn't that so?

Mr. CLARK. Based upon my recollection, I would say yes, that was so.

Mr. BEN-VENISTE. There were people flitting around buying castles in Europe on their own bank, purchasing jets, and engaging in fraudulent transactions that made the Madison Guaranty Savings & Loan look like a child playing in the sandbox; wouldn't you say?

Mr. CLARK. In terms of size, in terms of scale, that certainly would be true. However, some of the same basic things that occurred at Madison Guaranty occurred lots of other places.

Mr. BEN-VENISTE. We are not reinventing the wheel at Madison Guaranty. There were all kinds of similar transactions going on throughout the United States that precipitated what's being known as the savings and loan crisis; isn't that so?

Mr. CLARK. Yes.

Mr. BEN-VENISTE. It wasn't a function that you didn't want to take over these banks. You regulators realized that these transactions were improper and required some action, but the simple fact of the matter was that the country wasn't prepared to deal with losses on this scale at that point. When you said we didn't have the resources, you meant the financial resources to make good on the insurance?

Mr. CLARK. I meant that, but I also meant the personnel resources, the people it would take to actually close down all the thrifts as well, resources in many senses.

Mr. BEN-VENISTE. And so I put before you, from a document entitled, "Origins and Causes of the S&L Debacle: A Blueprint for Reform. A Report to the President and Congress of the United States by the National Commission on Financial Institution Reform, Recovery and Enforcement," dated July 1993. At page 48, where it says, "Weak regulation and lax enforcement by the Bank Board and virtually nonexistent regulation and supervision in States such as Texas, Florida, and California encouraged the equivalent of Ponzi schemes in which rapid growth, guaranteed accounting profits, and the capacity to loot S&L's through dividends, perks, bonuses, and payments to developer owners." Would you agree with that assessment?

Mr. CLARK. Yes.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Mr. Clark, let's put up chart number 2. This is the chart that we talked about where we showed the sale of properties from Ward and Madison Financial to a number of insiders at Madison. And we've gone through the first three transactions, which would be Master Developers, the Fitzhugh transaction, and then the Tucker transaction that the Chairman just made notice of, which was of the 35 acres of land.

What I would like to do now is go through the last three transactions that are set forth in this chart; \$120,000 to Mr. Kuca, \$770,000 to former Senator Fulbright, and \$1.12 million to something called Castle Sewer & Water.

If we could put up chart 8 first, which would be the Kuca transaction. Mr. Kuca was the manager of the Campobello project that Madison had up in Canada; is that your recollection?

Mr. CLARK. Yes.

Mr. GIUFFRA. That was another real estate debacle that Madison was involved in that you looked at and you've talked about. In this transaction, Mr. Kuca purchased 9 acres of land on November 20, 1985, not very long after the initial acquisition of the land on October 4, 1985. He paid \$120,000 for it to Madison Financial and he was someone who worked for the affiliated company of Madison. Now, in connection with this transaction, Susan McDougal received a \$12,000 commission. And again, your testimony would be that

was just a way to funnel money to a bank insider; the \$12,000 commission, correct?

Mr. CLARK. Where are we? Yes. I'm sorry, I was confused for a moment between the two \$12,000 figures. But yes, the \$12,000 figure or the \$12,000 paid to Susan McDougal was a way to give her funding.

Mr. GIUFFRA. You have no reason to think that she did any work in connection with obtaining this sale?

Mr. CLARK. No, I don't.

Mr. GIUFFRA. And so, this was a commission that she was not entitled to?

Mr. CLARK. Correct.

Mr. GIUFFRA. Madison funded this transaction with a loan of \$108,000 to Mr. Kuca, and then Campobello Properties Venture, an affiliated Madison company, gave Mr. Kuca a \$12,000 bonus. Do you recall this transaction?

Mr. CLARK. Yes.

Mr. GIUFFRA. So this was another way for Madison to fully fund the acquisition of this property by Mr. Kuca?

Mr. CLARK. Correct.

Mr. GIUFFRA. Would that be an improper practice by an S&L in your view?

Mr. CLARK. That's right.

Mr. GIUFFRA. Now can we turn to chart number 7—this is a somewhat complicated transaction. This has to do with the February 28, 1986 acquisition of the sewer and water utility by the Castle Sewer & Water Company. What do you recall about that particular acquisition, and then we will get to the chart? Generally what was the significance of Castle Sewer & Water Company obtaining this utility?

Mr. CLARK. It was the utility that would serve the single-family land development. It had already been constructed previous to the acquisition of the entire parcel from IDC. We thought at the time, and I think now, that it was essentially another straw transaction where Madison Guaranty, through one means or another, provided the entire purchase price of the parcel.

Mr. GIUFFRA. In connection with this transaction, Mrs. McDougal received a commission of \$120,000, 10 percent of the purchase price. In this transaction, interesting funding, there was a loan of \$825,000 to something called Dean Paul, Limited. Are you aware of that loan?

Mr. CLARK. To the best of my recollection, we were aware—we might have been aware about some involvement of Dean Paul.

Mr. GIUFFRA. Were you aware of Capital Management then providing a \$150,000 loan to Castle Sewer & Water Company?

Mr. CLARK. Let me explain a little bit. When we started analyzing this transaction, we started wondering where the \$150,000 downpayment came from and began looking. I think there was—we looked at several—at two or three possible sources, but we couldn't precisely pin it down.

When we began asking the management of Madison Guaranty about this project in particular through a series of written questions, we asked this question, "Where did the \$150,000 come from?"

We were told it came from Capital Management Services Company that was run by Hale.

Mr. GIUFFRA. Did you later learn that the \$150,000 from Capital Management was, in fact, part of the proceeds of a \$825,000 loan from Madison Guaranty to Dean Paul, Limited?

Mr. CLARK. I don't think we learned that during the examination. I believe I've read something about it long since.

Mr. GIUFFRA. And in this particular transaction, Madison Guaranty gave a loan of \$1.05 million, and then you had the \$150,000 loan, and then that funded the \$1.2 million purchase price of the utility. Do you recall any discussion of an appraisal that was conducted in connection with this utility by Mr. Betts?

Mr. CLARK. I recall generally Mr. Betts' involvement and then he produced a number of appraisals, including some on properties at Madison—excuse me, at Castle Grande.

Mr. GIUFFRA. What was your view of the appraisals that were prepared by Mr. Betts for Madison Financial?

Mr. CLARK. They were wholly inadequate.

Mr. GIUFFRA. Why were these appraisals wholly inadequate?

Mr. CLARK. Well, they didn't follow any recognized appraisal procedures used by the appraisal industry to determine value of property. Frankly, the reports seemed to us to be essentially shams, some documents to put in the loan file.

Mr. GIUFFRA. Do you recall speaking to Mr. McDougal during the course of the examination?

Mr. CLARK. Yes.

Mr. GIUFFRA. Did he indicate to you how he was able to determine what the sale price for some of these properties should be?

Mr. CLARK. He said he based it on his own experience.

Mr. GIUFFRA. Did he sort of indicate to you that he had a special experience with regard to the valuing of properties in the Little Rock area?

Mr. CLARK. In terms of valuing properties and in terms of determining the feasibility of and appropriateness of development, yes, he said it was based upon his special expertise.

Mr. GIUFFRA. Did he indicate to you in any way that his special expertise was based on principles or practices that are normally recognized in the appraisal industry?

Mr. CLARK. No, he did not.

Mr. GIUFFRA. Did you attempt to press him to try to find out the basis for some of the values that he was giving to various properties at Castle Grande?

Mr. CLARK. Let me clarify this a little bit. He was not placing values on the properties. These appraisals were—he—

Mr. GIUFFRA. Did you have a sense that Mr. Betts and Mr. McDougal worked very closely together?

The CHAIRMAN. Wait a second, let him answer the question.

Mr. CLARK. He was not placing the values on the properties, all right, the appraisal certificates were, Betts & Palmer, is my recollection. Those appraisals, in fact, justified—that is a bad word—

The CHAIRMAN. They used the appraisals to attempt to justify inflated values?

Mr. CLARK. Yes, thank you.

I am not sure what you are referring to. What Mr. McDougal did was to determine the cost allocations often, in determining the cost of sale for these parcels, so that, as I think I discussed in earlier testimony, those cost allocations were very low, producing a very large profit.

Mr. GIUFFRA. OK, let's turn to chart number 9, which is the Fulbright transaction. This would be an acquisition in January 1986 of 486 acres by former Senator Fulbright. What do you recall about this particular transaction, if anything?

Mr. CLARK. I recall that it seemed a little bit more problematic. In the first case, it was, to some extent, different from the others. The amount of equity was relatively small, and as I recall, it came in the form of notes that Fulbright essentially endorsed over to the institution.

The amount of profit recognized on this transaction, as I recall, was relatively small. I would have to check, but I believe that the amount of indicated loss, classification loss, that the exam found on the Fulbright loan was small, if there was any at all. So, as I say, and as I think I phrased it in the exam report, Fulbright may or may not have been acting as a straw.

Mr. GIUFFRA. Now, in connection with this acquisition, you also have another commission being paid to Susan McDougal; in this case for 10 percent, \$77,600 and this is just another example of the insiders basically feathering their own nests using the money earned in these transactions; correct?

Mr. CLARK. My recollection is, as in all of the other cases, Mrs. McDougal didn't perform services that would warrant payment of \$77,000.

Mr. GIUFFRA. Let's put chart number 2 back up on the screen. We have gone through six of these transactions. These were transactions involving sales of a total of \$3,187,000. Am I correct that, in your view, it appeared that each one of these transactions was a straw man transaction?

Mr. CLARK. With the exception of Fulbright, yes. As I said, the Fulbright transaction was more problematic. I wasn't certain about that one.

Mr. GIUFFRA. At least with regard to the other five, because of the fact that they were straw man transactions, they allowed Madison Guaranty to violate the provision in Arkansas law limiting the amount of money that Madison could invest in Madison Financial, the so-called Direct Investment Rule; isn't that right?

Mr. CLARK. They disguised the violation, yes.

Mr. GIUFFRA. This was a way to circumvent this important regulatory requirement which was intended to minimize the risk being borne by Madison Guaranty?

Mr. CLARK. That's correct.

Mr. GIUFFRA. And you would agree that from the beginning, meaning the acquisition of the IDC property by Mr. Ward, that that was just another straw man transaction intended to evade the Direct Investment Rule, using Mr. Ward to purchase part of the property?

Mr. CLARK. That's correct.

Mr. GIUFFRA. If we could put up chart number 1 for a second. I don't believe you have ever been asked this, at least in a Congress-

sional hearing. With regard to the actual \$1.15 million nonrecourse loan from Madison to Mr. Ward, did Madison receive any loan fee income on this loan?

Mr. CLARK. I don't believe so, but I am not sure based upon my recollection.

Mr. GIUFFRA. What is loan fee income?

Mr. CLARK. Many times borrowers are charged points, up front fees, in order to—when they are granted a loan, it is part of the compensation to the lender, just like interest.

Mr. GIUFFRA. Now, to the best of your recollection, were the terms of this \$1.15 million nonrecourse loan from Madison to Mr. Ward unusual in that the loan was only for 1 year with one semi-annual interest payment required?

Mr. CLARK. It was unusual for thrift institutions in general. It was not unusual for Madison Guaranty.

Mr. GIUFFRA. In this particular case, the land was actually sold before any initial interest payment was due on the note; isn't that correct? Do you recall that?

Mr. CLARK. It may have been that that is correct. It also may have been that an interest payment was due and waived. I'm not sure. That also frequently happened.

Mr. GIUFFRA. Just to look at the dates, the transaction occurred on October 4, and yet land is being sold starting almost immediately thereafter, in November, which would have been before interest would have been due on the loan.

Mr. CLARK. Now that you mention it, I think that's right.

Mr. GIUFFRA. That's further evidence of a straw man transaction involving Mr. Ward?

Mr. CLARK. That is correct. And frankly, on many of the loans that involved straws at Madison Guaranty, the straws did not pay interest, or it was funded by Madison Guaranty.

Mr. GIUFFRA. Normally—

The CHAIRMAN. Counselor, the light's been on, let's give it to the other side, suspend your questioning at this point, all right. Because you are going to attempt then to rush it and the other side is going to want their opportunity.

Senator SARBANES. How much more time do you expect to take, Mr. Chairman?

Mr. GIUFFRA. About 20 minutes or so.

Senator SARBANES. Why don't we go to Mr. Cole.

Mr. COLE. Now, I would like to shift the focus to the Campobello project, if I could.

Ms. Pulcer, am I correct in understanding you did not work on that particular transaction?

Ms. PULCER. On Campobello?

Mr. COLE. Yes.

Ms. PULCER. That's correct.

Mr. COLE. So, Mr. Clark, I will direct my questions to you. Perhaps it would make it easier for you if I gave you a copy of your 1986 report of examination. If you don't have that down there, I will have someone bring you a copy.

Mr. CLARK. I think I may have it.

Mr. COLE. I have a copy that's marked Campobello, page—

Mr. CLARK. Now, let me make—I have it.

Mr. COLE. If you could turn to page 8.4, correct me if I am wrong, sir, but I believe that is the portion of the report that describes the Campobello project?

Mr. CLARK. That's correct.

Mr. COLE. If you need to take a moment to review it, please do so, but could you describe briefly the Campobello project and the investment in that project by Madison Financial?

Mr. CLARK. The Campobello project was a land development. It involved the purchase of a substantial portion of Campobello Island, New Brunswick. It was a land development in the same way that the others were. Lots were being developed, it was the intent to sell them. I did not feel, as with many of the other projects, that the development was feasible. And, as with many of the other projects, funds were being siphoned off to insiders.

Mr. COLE. Can you tell us, in relative terms, the size of the Campobello project in comparison to the Castle Grande project that we have been discussing here today? And I believe the Castle Grande project is described at page 8.2 of your report, a few pages previous to the page I pointed you to on Campobello.

Mr. CLARK. At this point in time—the end of April, 1986—the total investment in Castle Grande is about the same as that in Campobello. The classification of assets is different. In Castle Grande's case, there is a split, \$1.8 million or \$1.9 million approximately, is substandard and \$1.8 million approximately is classified as loss. For Campobello, the entire amount, \$3.7 million, is classified as doubtful.

Mr. COLE. So am I correct in understanding, sir, that at that time, the exposure on Campobello was greater than the exposure on the Castle Grande property exposure, total exposure to the institution?

Mr. CLARK. The exposure that we could determine to be lost was greater.

Let me explain a little bit about classifications. The substandard classification indicates a greater degree of risk, but no loss is immediately apparent. The doubtful classification indicates that there is a distinct possibility of loss, but that the exact amount of the loss can't be determined. Of course, the loss classification indicates that there is a present and determinable amount of loss.

So we could determine, on Castle Grande, at the time of the examination, there was approximately a \$1.8 million of loss with the rest being a higher risk, substandard. For Campobello, we could not make a final determination of loss simply because of lack of information, as I recall, and so we classified the entire amount as doubtful.

Mr. COLE. So you had, in layman's terms, you had some concerns about the entire project?

Mr. CLARK. Yes.

Mr. COLE. Did you visit that project, Mr. Clark?

Mr. CLARK. Campobello?

Mr. COLE. Yes.

Mr. CLARK. Yes.

Mr. COLE. What did you find when you visited it? What were your observations?

Mr. CLARK. Campobello Island is scenic, a lot of the coastal areas are very beautiful. The land is rocky which meant that you couldn't use septic tanks because it simply is not feasible, which of course would increase the cost of development. We found that the Campobello Island is in the Bay of Fundy. The Bay of Fundy has one of the highest tides in the world, so that many of the seafront lots which were bordered on water at least on an inlet of the sea, at high tide, were a half mile to a mile from the water at low tide.

All of these things, make this development just to one extent or another less attractive to buyers or would increase development costs. For that reason and for the fact that no effective feasibility study was in hand at the time, we felt that the project may very well not have been feasible.

Mr. COLE. If I could direct your attention to the middle paragraph of the page of your examination report that discusses the Campobello investment, the first sentence, "Madison Financial has always provided most of the capital to Campobello," and then you go on to describe the then-current structure of the investment.

And the fourth sentence, "This relationship has now been restructured leaving Madison Financial as the general partner with a 75 percent interest, and Sheffield Nelson and Jerry Jones as limited partners with interests of 12.5 percent each." Do you see that portion?

Mr. CLARK. Yes, I do.

Mr. COLE. I think you've already testified as to your knowledge of who Mr. Nelson and Mr. Jones were, and are, so I won't re-cover that, but the point that I am interested in, and you may or may not be able to provide any testimony on this, is the ultimate disposition of the Campobello investments by Nelson and Jones. Do you know what happened with regard to their investment in Campobello? And obviously it occurred after your examination—

Mr. CLARK. No, I don't recall.

Mr. COLE. So you don't recall that they were bought—that their initial investments of \$225,000 each were bought out in 1988 for \$362,000 each, giving them each a profit of about \$137,500?

Mr. CLARK. No, I don't recall knowing that.

Mr. COLE. Based on your experience as an examiner, in 1988, Madison would have been operating under the Cease and Desist Order that was put in place following your examination; correct?

Mr. CLARK. If it had not been released, yes, that would be correct. I don't know that it ever was—

Mr. COLE. I understand. What I am getting at, would it have been unusual in terms of regulation of financially-troubled savings and loans generally for investors in a project that was as troubled as you found Campobello to be in 1986 to be bought out using Federally-insured funds at not only a recovery of their investment but also a return of capital, or profit?

Mr. CLARK. I would have to question that transaction, yes.

Mr. COLE. But you don't have any testimony that you can provide for the Committee on that transaction, the buyout, the subsequent buyout?

Mr. CLARK. No, I am not familiar with that transaction.

Mr. COLE. We will save that for another day, then.

Thank you, sir.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Just going back to the question about terms of a development loan, normally, am I correct that a loan would be based on a development plan, the terms of the loan?

Mr. CLARK. Yes, in part, a development plan would indicate to a lender when repayment could be expected and how to structure the loan, and also a development plan would indicate the cost of development which would tell the lender the amount of the loan that was needed.

Mr. GIUFFRA. And there was no meaningful development plan that you saw in the files of Madison Guaranty with regard to any of the projects related to Castle Grande?

Mr. CLARK. There were a number of documents labeled as development plans, but they did—were not effective in doing that.

Mr. GIUFFRA. Now, am I correct that Madison—this is a more general question—regularly rolled over loans that were not current as to interest and principal?

Mr. CLARK. Yes, that's correct.

Mr. GIUFFRA. That was done to disguise the problems with those loans?

Mr. CLARK. Yes, at least it was done to disguise the fact that perhaps the borrowers could not afford to pay the interest out of their own funds.

Mr. GIUFFRA. That was done with regard to some of these Castle Grande loans, the rolling over of the loans?

Mr. CLARK. That may be true, but I don't recall specifically. It very well may have happened.

Mr. GIUFFRA. During your exam, you found that Madison insiders accrued a number of benefits, amongst them being the ability to finance real estate projects that were fully funded by the bank, by the S&L; correct?

Mr. CLARK. Yes.

Mr. GIUFFRA. And in some instances, to receive real estate commissions that they were not entitled to; right?

Mr. CLARK. Or at least that they did not truly earn, yes.

Mr. GIUFFRA. Or receiving a real estate commission on a project where you are the buyer is obviously a commission that you didn't earn?

Mr. CLARK. Correct.

Mr. GIUFFRA. Did you also find that one of the benefits afforded to Madison insiders was the ability to write checks on insufficient funds?

Mr. CLARK. Yes, that occurred.

Mr. GIUFFRA. What did you find with regard to the ability of Madison insiders to write checks on insufficient funds?

Mr. CLARK. They could do so and the checks would be force paid; that is, they would be paid despite the fact that they overdrew the account. And at various times several of the insiders' accounts were overdrawn by substantial amounts.

Mr. GIUFFRA. Earlier you testified that you believed that there were indications that Madison management was actively trying to obstruct your examination. Do you recall that testimony?

Mr. CLARK. Yes, I do.

Mr. GIUFFRA. Do you recall any instances in which Madison management was attempting to obstruct your examination with regard to Castle Grande?

Mr. CLARK. There was a problem with obtaining checks and disbursement documents from an outside title company with regard to the initial purchase from IDC. I believe there were problems in obtaining loan files right along.

Mr. GIUFFRA. These would be Castle Grande loan files?

Mr. CLARK. I am speaking of Castle Grande.

Mr. GIUFFRA. What were the condition of the Castle Grande loan files, as far as you can recall?

Mr. CLARK. They were a mess.

Mr. GIUFFRA. What sorts of documents were missing from those loan filings that normally should have been contained in loan projects for projects such as Castle Grande?

Mr. CLARK. Many and sundry, particularly important was the loan settlement statement which would, of course, tell where the loan funds went. We've talked about the inadequacies—

Mr. GIUFFRA. The fact that there was no settlement statement was a way for the insiders to divert loan proceeds into their personal accounts; isn't that right? It was a way of concealing the diversion of loan proceeds?

Mr. CLARK. It was a way of concealing the diversion. Normally on a settlement statement, all checks issued are detailed one by one. At Madison Guaranty, either the settlement statements were all—in most transactions, the settlement statements were either missing entirely or else just had one large, lump sum disbursement for the entire loan amount without detailing the checks issued.

Mr. GIUFFRA. And that was something, for example, that was true on the Jim Guy Tucker loan that we had up awhile ago with the \$260,000 that the Chairman was commenting upon?

Mr. CLARK. To the best of my recollection, I think that was true of the Tucker loan.

The CHAIRMAN. Did you ever see anything like that before?

Mr. CLARK. Perhaps in one or two minor cases, in which case, we criticized it severely. In fact, this particular point, the presence of a completed settlement statement was required by regulation.

The CHAIRMAN. Let me ask you, did you ever see a situation where somebody got a loan, a nonrecourse loan, which means that they can't be sued if they don't pay; right? That's unusual in itself, isn't it?

Mr. CLARK. I have seen it elsewhere, but it certainly adds to the risk of the transaction for the lender.

The CHAIRMAN. Right, but did you ever see one where the property was bought for \$125,000, and then a loan was given for \$260,000? I mean, twice the value of the property that they paid? We don't know what the value is because we have these phony real estates appraisals. Have you ever seen anything like that?

Mr. CLARK. Well, in many development loans, the loan for the purchase of the raw land and the ultimate development of the property are combined, so you would have a loan amount very much larger than just the purchase of the raw land.

In this case, as I think I testified earlier, when we started looking at where the other \$135,000 went, we could only trace it, trace a check to Mr. Tucker. We were told that——

The CHAIRMAN. You did trace a check to Mr. Tucker?

Mr. CLARK. Yes, we saw a check go to Mr. Tucker.

The CHAIRMAN. How much was that for?

Mr. CLARK. \$135,000. When we asked why they gave him the money, we were told it was to clear the land and prepare a development. The land had been cleared, but it didn't seem to us that it would cost that much money to clear 35 acres of land. And the development report was, again, wholly inadequate, but it would certainly not seem to have cost that much money.

The CHAIRMAN. OK.

Mr. GIUFFRA. Mr. Clark, let me see if I can quickly sum up your testimony with regard to the entire project, that is on the easel right there, at least as far as you knew, that was known as Castle Grande?

Mr. CLARK. Yes.

Mr. GIUFFRA. That's how bank insiders described it to you; is that correct?

Mr. CLARK. For the most part, yes.

Mr. GIUFFRA. When you discussed it with other bank regulators, the whole project was known as Castle Grande?

Mr. CLARK. That's correct.

Mr. GIUFFRA. Ms. Pulcer, would you agree when you discussed this particular project with bank insiders, it was known as Castle Grande, the whole project, the north portion and the south portion?

Ms. PULCER. I believe so, yes.

Mr. GIUFFRA. When you discussed this particular loan with other bank regulators, it was known as Castle Grande, both the north and the south portion of this project?

Ms. PULCER. Yes, we referred to it as Castle Grande.

Mr. GIUFFRA. If we could put up chart number 3, very quickly.

With regard to at least these six loans, you will agree that five of the six would be straw purchaser transactions; is that correct, all except——

Mr. CLARK. Yes, all except for Mr. Fulbright's loans.

Mr. GIUFFRA. All involved sales to insiders; correct?

Mr. CLARK. Yes.

Mr. GIUFFRA. All involved financing by Madison; correct?

Mr. CLARK. Correct.

Mr. GIUFFRA. Typically nonrecourse loans?

Mr. CLARK. Typically.

Mr. GIUFFRA. And typically you have large commissions going to insiders, and in particular to Susan McDougal?

Mr. CLARK. That's correct.

Mr. GIUFFRA. These commissions were not earned commissions; these were commissions that were a means to send money to bank insiders?

Mr. CLARK. That's correct.

Senator SARBANES. Mr. Clark, are you encompassing Senator Fulbright within each of those answers?

Mr. CLARK. I'm sorry. My understanding was that these——

The CHAIRMAN. With the exception of Senator Fulbright, he said that transaction he would not make a comment on, he was not in the position. And all of the transactions that he's testified to encompass five out of the six, they do not include Senator Fulbright.

Senator SARBANES. I think he ought to make that point each time because we have a chart sitting up there on the Elmo to which you are replying. And the question is all in each instance.

The CHAIRMAN. Why don't we say with the exception of the transaction of Senator Fulbright, that's in the record. It is noted. I think we have commented on it several times. But to make sure that there is no misinterpretation, we will set the record straight. Again, he makes no judgment with respect to the transaction Senator Fulbright was involved in; is that correct?

Mr. CLARK. That is correct. Some of the problems that we were enumerating may be true of Senator Fulbright and others may not be. But when I was replying, I was thinking definitely of the other five.

Mr. GIUFFRA. In fact, in the Senator Fulbright transaction, you also have a commission being paid to Susan McDougal for \$77,000; I believe?

Mr. CLARK. That's correct.

Mr. GIUFFRA. And then the entire project, you don't have a feasibility study at the outset in October 1995; correct?

Mr. CLARK. Correct.

Mr. GIUFFRA. Only feasibility studies in November 1986, which is the wrong time to have a feasibility study obviously; you would agree with that?

Mr. CLARK. Yes, I would.

Mr. GIUFFRA. So to sum this up, would you describe these Castle Grande transactions as a sham?

Mr. CLARK. The five?

Mr. GIUFFRA. Yes.

Mr. CLARK. Yes.

Mr. GIUFFRA. Ms. Pulcer, would you describe the five we have discussed, excluding Senator Fulbright's transaction, these five transactions, would you describe them as sham transactions?

Ms. PULCER. I don't know as I would use that terminology, but I would say that we were not able to fully determine the purpose of those loans at that time.

Mr. GIUFFRA. They were very suspicious transactions; would you agree with that?

Ms. PULCER. I would agree with that.

Mr. GIUFFRA. No further questions.

The CHAIRMAN. I would like to make an observation. The Committee, on December 4, 1995, wrote to the Office of Independent Counsel, or we actually wrote to him before that. We submitted a list of potential witnesses to the Independent Counsel and sought his advice, whether his investigation would be hindered or impaired if the Committee examined the following witnesses on December 4th.

The Office of Independent Counsel objected to this Committee's examination in any fashion of the following witnesses: Neal Ainsley, who is with the Perry County Bank; Lisa Anspaugh, a former employee of Madison; Don Denton, a Vice President of

Madison Guaranty; David Hale, Capital Management; Larry Kuca, the Madison insider of Campobello; John Latham, President of Madison; Dean Paul, who was involved in the actions involving Hale, Tucker, Randall, Madison, and McDougal; R. D. Randolph, a business partner of Tucker and McDougal; Robert Palmer, a Madison appraiser; Steven Smith, a business partner of McDougal and former aide to Governor Clinton; and Greg Young, a Vice President of Madison Guaranty.

In addition, the Committee, in the quest to obtain information, subpoenaed business records of Jim Guy Tucker and also of Mr. McDougal. And as a result of their attorney raising objections to it and threatening the process of the trial, we withdrew that request for enforcement of the subpoena.

Now, why do I raise this? Because I believe that the charges and attacks—some of a very political, partisan nature—have been leveled unfairly. The Chairman has and will continue to attempt to do the business of the Committee in a fair and impartial manner. But we are going to be comprehensive, we are going to be thorough. We are going to get the facts, that's what our job is.

The fact that some people may be disturbed because some of the facts that are being produced and the testimony, and even testimony with Mr. Clark, reveals very vividly some of the descriptions that have been made with respect to this bank. I said before that I learned and I was surprised to learn the extent, and today I learned even more of the criminal enterprise of this bank.

This was a criminal enterprise being operated by Jim McDougal. They were nothing less than thieves, he and his wife and others engaged with him in this practice. I think it is a very fair and reasonable question to attempt to ascertain exactly what did Webb Hubbell know. This isn't just some stranger, this is President Clinton's dear friend, his best friend, Associate Attorney General. It was his father-in-law that participated in one of the biggest shams that cost the American taxpayers millions of dollars, not just once, but repeatedly.

This was at the centerpiece of this Castle Grande property. They didn't advertise it on television as IDC or IDC Development. It was advertised, it was known, it was promoted as Castle Grande. Now, one has to be rather naive to think that Webb Hubbell didn't understand that his father-in-law and the Rose Law Firm, because he was a partner of the Rose Law Firm, didn't understand what was taking place. And that's what we are getting to.

We are talking about records that indicate billable time, time involve in these transactions, records to indicate that indeed partners in the law firm were talking to Seth Ward; not once, not twice, not occasionally, but more than a dozen times. Billing records to indicate that partners prepared documents and reviewed contracts with respect to this.

I think it is rather disingenuous, and bring a tax on the work of the Committee when indeed, many of these records and much of this information has just come forth and just come into the possession of the Committee rather recently.

Now, we are going to pursue this. And I am not going to be dissuaded by the kinds of attacks and statements that have come forward. I want to do it fairly. I want to do it as expeditiously as we

possibly can, but remember the constraints that were placed upon us when we entered into this. That's the manner in which I intend to proceed. No amount of bullying is going to dissuade this Senator from going forward in this manner and I will not be diverted.

That's my statement.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, at the end of September, you and I joined in a letter to the Independent Counsel in which we said we believed that, "The concerns expressed in your letter do not outweigh the Senate's strong interest in concluding its investigation and public hearings into the matter specified in Senate Resolution 120 consistent with section 9 of the Resolution." Which was the provision that we complete our work by February 29, 1996.

First, the fact that the Independent Counsel has raised some objections, it seems to me, ought not to dissuade us from pressing forward, intensifying our hearings, and completing this Arkansas phase of the inquiry.

Second, I simply note that the Independent Counsel's inquiry will, of course, continue. That was what happened in Iran-Contra. The Congressional hearings were concluded within 7 months from the appointment of the Committee—we are now approaching 9 months—but the Independent Counsel in that instance continued. Of course, the Independent Counsel in this instance would continue, as we well know.

Now, the trial to which reference has been made has been twice postponed, once from October to January and again from January to March. For all we know, it may be postponed again. We have no way of knowing and then we have no idea of how long it will last once it begins.

What all of this does, adjoined together, is simply to prolong this inquiry well into the election year. And as I have said, and as we said in our report, we believe that doing that will contribute to a public perception that the investigation is being conducted for political purposes. It is for that reason that I have strongly urged the Chairman to intensify the hearings, to try to give more form to the witnesses that are going to be called, to look at other testimony that they've given to see whether that can be utilized by the Committee, and to press ahead with our work.

We are about finished, I take it, with this panel. As I indicated to the Chairman last week, I thought we should have done another panel today. We worked at that pace earlier in our inquiry. And the Iran-Contra certainly worked at that pace consistently in the summer of 1987 in order to complete its work and not carry it over into an election year. In fact, when that Resolution was passed, Senator Dole was rather strong about the necessity to do the work within the allotted time and not to continue thereafter as we were considering the Iran-Contra Resolution. And so I just want to underscore that again as some of my colleagues have here today.

What time will we convene in the morning, Mr. Chairman?

The CHAIRMAN. We will convene at 10 tomorrow morning. I wish to note that the Committee started this session at 10:30 a.m., did not take any breaks whatsoever, and it is now 20 minutes to 3.

I think that we have proceeded in a very reasonable fashion. I might also like to say, again, this is the first time that the issue

of Castle Grande has been reviewed with some detail, so that we'd have an idea, both the Committee and the American people, as to what we are talking about when we talk about sham transactions, straw men, manners in which moneys were routed improperly.

So I think it was a very important hearing and it was right to have this panel with us, because Mr. Clark and Ms. Pulcer were there, when these things were taking place.

I want to thank the witnesses for appearing today. I also want to say that they came in, and obviously, couldn't answer all our questions. Given the fact that, in many cases, you didn't have documentation to refresh your memories, given that some of the questions that were asked by both sides—I would say probably more on the Republican side than even my colleagues on the Democratic side—you had no way of really knowing some of the answers, but you answered to the best of your ability. The Committee thanks you for your participation, for your patience, and for your candid testimony.

We stand in adjournment until tomorrow at 10 a.m.

[Whereupon, at 2:58 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Wednesday, January 31, 1996.]

[Appendix supplied for the record follows:]

SUMMARY

James McDougal, a major stockholder, with the help of others effectively controls the affairs of the Institution and its wholly-owned subsidiary. Among other things, this control enabled Mr. McDougal to use corporate resources to develop large land developments. It also enabled him to divert substantial amounts of funds from the projects to himself and others, who are considered to be insiders (relatives of Mr. McDougal, employees, relatives of employees and friends).

These developments have been determined to be of questionable economic worth and significant losses are apparent. Of particular concern are the Campobello, Maple Creek and Castle Grande projects. If recognized, losses associated with these projects could render the Institution insolvent.

For the most part, all projects, including the end-loans to purchasers, were financed by the Institution. Basically this funding was provided by cash receipts derived from insured savings deposits. Since Mr. McDougal acquired the Institution in 1982, liabilities grew from \$6 million to over \$123 million.

A large portion of the profits associated with the projects (sales of lots and tracts) were taken into income immediately. This accounting treatment is improper (as such sales were usually fully financed by the Institution and indirectly by its subsidiary). Instead, the profits should have been deferred. If the profits were booked properly, the Institution would be, in fact, insolvent.

These profits also had a direct relationship to savings growth. By increasing net worth with the profits, the Institution effectively maintained a base to support some of this growth. The growth allowed Mr. McDougal to make the development investments and to direct cash payments to himself and other insiders.

In addition to the improper accounting entries, management blatantly disregarded numerous regulations, including the growth regulation. It is also apparent that certain provisions of the August 6, 1974 Supervisory Agreement were ignored.

The Board of Directors consented to a Cease and Desist order which became effective on August 15, 1986, and is shown as Exhibit I. This order addresses most of the problems contained in the comments.

In the Board of Director's meeting on July 17, 1986, Mr. John Latham resigned as a Director, and the Board terminated his employment as Chairman of the Board and Chief Executive Officer. He was retained as an advisor to the Board. A Board Committee, composed of Directors Cuffman and Hawkins, is now directing the affairs of the Institution.

Formal investigative powers have been granted in this case under Section 407(m)(2) of the National Housing Act.

Description and Comments	Net Book	Classification		
	Value	Substd.	Debtful.	Loss

The Sewer District also does not appear to provide a secondary source of repayment. Since its three commissioners are McDougal-Henley Group members (William Henley, Pat Harris, and Bruce Watson), the Sewer District is not an independent entity. The Sewer District continues to have substantial negative cash flows, both before and after debt service. These operating deficits are funded by Madison Guaranty loans to the Sewer District. Periodically these loans are repaid when Madison Guaranty purchases additional bonds.

Mr. Latham and Mr. McDougal stated that Maple Creek would eventually be profitable. Director Hawkins even questioned why the examiners were reviewing the project. However, Mr. Latham admitted that no feasibility study has ever been prepared on Maple Creek. He also stated that continued development was based on the early sales experience. However, as noted above, the nature of the development has changed (lot size reduced), and the current sales experience has been poor.

Castle Grande

Book Direct Investment	
- Madison Financial	\$ 988,721

Mortgage Loans Considered Direct Investments

Madison Guaranty

Tucker	No. 3004	\$ 260,000
Fitzhugh	No. 3007	458,407
Kuca	No. 3134	108,000
Castle Sewer and Water		
	No. 3357	100,000
	No. 3358	950,000
Ward	No. 3359	70,000
	No. 4027	300,600
Master Developers	No. 4113	424,800

Total Loan Direct Investments \$2,671,807

Total Direct Investment \$3,660,528 1,873,000 \$1,787,528

1. Overview

The Castle Grande project involves approximately 1,100 acres of land located about ten miles south of Little Rock, Arkansas. At the time of purchase, the land was improved with a water and sewer system and an industrial building. The parcel was purchased from the former corporate owner under a workout arrangement with the owner's creditors. This land was purchased and sold in a series of fictitious transactions involving McDougal-Henley Group members and Madison Financial. These sales were usually fully financed by Madison Guaranty, and down payments generally came from the proceeds of loans or fees paid by Madison Guaranty or its subsidiaries. Because arbitrarily low cost allocations were used in calculating the cost of sales, these transactions generated \$1,817,000 of inflated profits that were recognized at the time of sale by Madison Financial. Sales commissions of \$375,000 were paid to Madison Real Estate.

Approximately half of the land is being developed by Madison Financial as single-family sites for manufactured homes. Of the \$715,000 of development costs paid to April 30, 1986, \$104,000 (14.5%) has been paid to McDougal-Henley Group members or related business entities.

Description and Comments	Not Book	Classification		
	Value	Subsid.	Deficit.	Loss

2. Reasons for Classification

The total current investment in this project exceeds its current economic value, in part, because of the inflated profits and payments to insiders. The classified investment includes the direct investment of Madison Financial and the commercial loans by Madison Guaranty to fully finance sales of land to McDougal-Henley Group members who apparently acted as straws. Since Madison Guaranty has apparently retained the risks of ownership on these loans, they are also considered direct investments.

There are significant problems with the project. Much of the land is low and swampy and cannot be developed without considerable cost. The sale of the land for an industrial, commercial, or home site use is the primary source of both repayment of the loans and return of the investment. There is no evidence that there is a viable market for this land in any of these uses. The land has been on the market as industrial sites for ten years without significant sales. Most of the sales volume that has occurred so far has been to insiders acting as straw buyers. The sales of home sites have been the best, most easily developed lots. Many of these sales involve preferential financing by Madison Guaranty. Some of these loans are to borrowers with such poor credit that they might not obtain financing elsewhere. Most of the home development near Little Rock has not occurred south of town where Castle Grande is located. The loss classification is based on a survey of current market data made by the Appraisal Specialist.

Reports and other documentation of cost, value, and feasibility are so completely inadequate that no reliance can be placed in them. The Appraisal Specialist reviewed a representative sample of the appraisals made on the entire project and in underwriting Madison Guaranty loans. He found that they did not conform to the guidelines of "HLBE Memorandum 9-41b," and did not even conform to any acceptable appraisal process.

There does not appear to be a reliable secondary source of repayment of the loans or return of the investment. The borrowers on the classified loans are McDougal-Henley Group members who acted as straws and have little or no cash equity in the project. Most of the borrowers have little apparent financial worth independent of Madison Guaranty. Thus, these borrowers may not have either the ability or inclination to pay the loans themselves.

The land and improvements which secure three of the loans, do generate revenue from outside sources. However, the lease payments from an industrial building are insufficient to cover the debt service on the loan to Fitzhugh. Castle Sewer and Water receives fees from users of the Castle Grande system which could provide debt service on its two loans. However, the fees attaching new customers to the system are to be paid by Madison Financial which is not an outside source of income. Both the hook-on fees and the continuing user fees are dependent on land sales in the development, and the sewer system will operate with a negative cash flow for the foreseeable future.

Mr. Latham stated that management believed Castle Grande would be profitable based upon their experience at Maple Creek and upon Castle Grande's subsequent sales history. However, as discussed elsewhere, Maple Creek sales activity is very sluggish, and there is reason to doubt that the sales in Castle Grande indicate a viable market.

Summary

Book Direct Investment

Investment - Madison Financial	\$2,107,706
Accounts Receivable - Madison Financial	9,000
Loan - Madison Guaranty	1,106,545
Overdrafts - Madison Guaranty	<u>\$ 510,327</u>

Total Direct Investment	\$3,733,578	\$3,733,578
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1 discussion at the Little Rock office of Mr. McDougal's ties,
2 specifically by name, Mr. McDougal's ties with prominent
3 elected officials in Arkansas?

4 *Mr. Clark. Yes. I was informed by Mr. Parr that
5 James McDougal was a friend of then-Governor Clinton's, and
6 I believe that they may have been business partners.

7 *Mrs. Roukema. So you recall that Mr. Parr not only
8 mentioned the friendship, but that there were not only
9 social acquaintances, but business relationships between the
10 two?

11 *Mr. Clark. Business and that they were both
12 involved--there were political connections as well.
13 I believe he may have mentioned--I believe he mentioned
14 it at that time that there may have been business
15 connections, but I am not absolutely positive of that.

16 *Mrs. Roukema. Primarily, at that point, you were very
17 clear, however, concerning the political connections?

18 *Mr. Clark. Yes.

19 *Mrs. Roukema. In conducting your examination of
20 Madison Guaranty, did you come across any references to the
21 Clintons in the specific records that you were reviewing?

22 *Mr. Clark. Yes. Infrequently, I came across notes,
23 thank you notes, similar sorts of correspondence involving
24 social occasions.

25 *Mrs. Roukema. But not, to your knowledge, any

1 loans and assets and interest cost of deposits--that spread
2 did not cover its operating expenses.

3 So Madison Guaranty could not make money through normal
4 means. The only way Madison Guaranty was making money was
5 through these fictitious profits we spoke of earlier.

6 *Mr. Ney. Based on your--Mr. Chairman, my time has
7 expired.

8 *The Chairman. Yes, it is. Mr. Sanders.

9 *Mr. Sanders. Mr. Clark, if I might. Earlier today we
10 received a document that you compiled which listed then
11 Governor Clinton as a "tentative insider" at Madison
12 Guaranty. As your investigation continued, what did you
13 discover about Mr. Clinton's role in Madison's financial
14 troubles?

15 *Mr. Clark. We didn't find any financial transactions
16 with Mr. Clinton.

17 *Mr. Sanders. So you found nothing whatsoever.

18 *Mr. Clark. We found no transactions involving Mr.
19 Clinton financially. We did not find funds going to Mr.
20 Clinton.

21 *Mr. Sanders. What did you mean by "tentative
22 insider?"

23 *Mr. Clark. As I said, the process was to provide--
24 intended to provide a list of names to the assisting
25 examiner so that when they would review transactions, if one

SUP/MON/ME!

TO: File
 FROM: John Mitchell
 DATE: April 3, 1985
 SUBJECT: Madison Guaranty S&LA ("Madison")
 Little Rock, Arkansas
 FHLBB No. 7601

At the request of Madison's management, a meeting was held today at 1:00 p.m. in the Pueblo Room, FHLB of Dallas. Attending were: John Latham, CEO; Greg Young, CFO; Sarah Worsham-Hawkins, Sr. V.P.; Jim Smith, Supervisory Agent; John Mitchell, Supervisory Analyst; Anna Mullican, Supervisory Analyst; and Jim Boggs, Supervisory Analyst. The purpose of the meeting was for Madison's management to become acquainted with regulatory personnel and to discuss the business plan previously submitted by Madison.

The SA indicated general satisfaction with Madison's business plan as well as corrections and improvements following the last examination report except that the rapid growth has not been accompanied by proportionate increases in Net Worth. Madison's business plan reflects projected total assets at December 31, 1985 of \$100 million which would be 108 percent annual growth over the fiscal year. Projected net worth is \$1.5 million which is only 1.5 percent of total assets and insufficient to meet the minimum net worth requirement. The institution has grown at an annualized rate of 192 percent through the first two months of 1985. The SA advised that, without adequate net worth, the growth would have to be curtailed. Ms. Hawkins stated that, under the new regulation, the estimated net worth requirement at March 31 would be \$1.12 million, and net worth would be about \$300,000 short of meeting that requirement. The Association plans to issue \$600,000 of preferred stock for which a buyer is awaiting issuance, and a second issue of an unknown amount will follow shortly thereafter. The business plan projects total assets at \$148 million at December 31, 1987, and management professes concern for its net worth position and an intent to meet all regulatory requirements.

A discussion was had regarding Madison's service corporation development projects, with which we have a reasonable comfort level. The service corporation, Madison Financial Corporation, is run by Jim McDougal, who owns 84 percent of Madison. Development has involved purchase of relatively cheap raw land and development into lots or tracts (1-5 acre) suitable for building. Madison has financed lot sales, but has not become involved in any commercial construction loans incident to any developments. The projects are:

- (1) Maple Creek - A highly successful residential development just southeast of Little Rock. Initial phases are sold out, with later phases over 70 percent sold.
- (2) Gold Mine Springs - A development in rural north central Arkansas. Within the last two weeks, this project is almost sold out; what has not been sold will be sold to a limited partnership.

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Memo to File
April 4, 1985
Page 2

- (3) Green Tree Farms and Fair Oaks - two projects of 50-55 tracts of 2-5 acres each in Camden, Arkansas. Green Tree Farms is completely sold, and Fair Oaks is over 70 percent sold in 4 months.
- (4) Campobello Island - A residential tract development in Nova Scotia. Sales have at least equalled Madison's investment in this project. Madison has only a one-fourth interest in this project by virtue of its one-half interest in a joint venture comprised of two limited partnerships. After the return of investment, some 3400 acres remain which can be developed. Madison is not obligated to be a lender or participant in further development, though it may choose to later participate. One acre tracts have been developed for summer homes, with plans by the joint venturers to later build a hotel, marina, etc.

The SA advised that Madison's growth, investment strategy and net worth compliance would be monitored closely. Though the institution was profitable (\$104,000) in 1984 and shows a \$128,400 profit for the first 2 months of fiscal year 1985, the SA advised that growth would have to be accompanied by adequate capital.

JHM:mm

bcc: ADRO/OES
DD/OES
State

Document Name: 3420

032902

1018027

**GENERAL REPORT ON THE
INVESTIGATION OF
MADISON GUARANTY SAVINGS & LOAN
AND RELATED ENTITIES**

**Prepared For
RESOLUTION TRUST CORPORATION**

**Prepared By
PILLSBURY MADISON & SUTRO LLP
Los Angeles and San Francisco, California
With Financial and Economic Analysis Support From
TUCKER ALAN INC.
Seattle, Washington**

December 28, 1995

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I. SCOPE AND FOCUS OF THE INVESTIGATION.

On February 4, 1994, the Resolution Trust Corporation ("RTC") issued an Order of Investigation in the matter of Madison Guaranty Savings and Loan, McCrory, Arkansas ("Madison Guaranty"). The Order of Investigation stated (among other things) that the investigation would seek to determine whether

former officers, directors and others who provided services to, or otherwise dealt with, Madison Guaranty . . . its successors or affiliates, may be liable as a result of any actions, or failures to act, in connection with or which may have affected Madison, its successors or affiliates . . .

The Order was issued consistent with 12 U.S.C. § 1441a(b)(14), as modified by the RTC Completion Act of 1993, Public Law 103-204. That statute extended the limitations period applicable to RTC claims arising from fraud, intentional misconduct resulting in unjust enrichment and intentional ~~misconduct resulting~~ in substantial losses to the institution.

~~The focus of the investigation was shaped by several factors. First, a number of the officers, directors and other people involved with Madison Guaranty and related entities had been released from liability or discharged in bankruptcy, or had only minimal assets to satisfy any judgment that the RTC might obtain against them. Second, the losses associated with a number of the real estate loans and projects were, standing alone, too small to make it likely that litigation could be cost-effective. Third, it became apparent that funds had been transferred among individuals and entities associated with Madison Guaranty or with Madison Guaranty's principal owners, Jim and Susan McDougal, in ways that could not readily be justified or explained.~~

In light of these factors, (1) ~~the investigation of real estate loans and projects focused primarily on the two transactions presenting the strongest combination of facts and possible sources of recovery (Castle Grande and 1308 Main Street, Little Rock); (2) the investigation of other real estate loans and projects looked for patterns and practices of misconduct that might make it cost-effective and not unduly complex to add these transactions to any litigation that might be brought based on Castle Grande and 1308 Main Street; and (3) the investigation of Whitewater included an effort, using forensic accountants, to trace funds back to Madison Guaranty and, in so doing, to look for patterns and practices of misconduct in the funds transfers among individuals and entities associated with Madison Guaranty or with Jim and Susan McDougal.~~

In February 1994, the RTC retained Pillsbury Madison & Sutro LLP ("PM&S") as outside counsel to assist in the investigation. Thereafter, the RTC retained Jordan & Keys as outside counsel to assist in the investigation and

Tucker Alan Inc. as forensic accountants to provide financial and economic analysis support.

II. EXTENT OF INVESTIGATION TO DATE.

Pursuant to the Order of Investigation, over 350 boxes of documents from the following sources have been collected and examined:

1. Records of Madison Guaranty and Madison Financial
2. Records of the Office of Thrift Supervision
3. Records of the Federal Home Loan Bank Board
4. Reports of Borod & Huggins and Gerrish & McCreary
5. Aetna Life & Casualty Company
6. Arkansas Securities Department
7. Citizens Bank of Jonesboro
8. William Jefferson Clinton and Hillary Rodham Clinton
9. First Commercial Bank
10. First National Bank of Wynne (fka Bank of Cherry Valley)
11. First Ozarks National Bank (fka Citizens Bank of Flippin)
12. J. W. Fulbright
13. Madison Bank and Trust
14. McCartney, Manning, McDonald & Guinn, Inc.
15. James B. McDougal
16. Meadors & Adams
17. Mitchell, Williams, Selig & Tucker
18. Rose Law Firm
19. Searcy County Bank
20. Security Bank of Paragould
21. Stephens Security Bank
22. Stogniew & Associates
23. Virginia Surety Co., Inc.
24. Worthen Bank
25. Betsy Wright, Wexler Group

In addition, Jordan & Keys obtained other documents from additional witnesses.

Beyond the sources of documents listed above, the following individuals have produced documents either by voluntary production or by subpoena:

1. Lisa Aunspaugh
2. George Betts
3. Jim Clark
4. Stephen Cuffman
5. Harry Don Denton

6. Mary Freeman
7. Sarah Hawkins
8. Larry Kuca
9. ~~Sheffield Nelson~~
10. Dean Paul
11. George N. Plastiras
12. R. D. Randolph
13. Sue Strayhorn

A number of other witnesses have responded that they either retained no documents pertinent to the investigation or had previously turned over their documents to the Office of the Independent Counsel without retaining copies.

In March 1994, the RTC moved for production of documents in the hands of the Independent Counsel. The motion requested Madison Guaranty documents and the Quapaw Title Company records formerly in the possession of the RTC that had passed to Central Bank & Trust, which purchased much of Madison Guaranty. That motion was granted and an agreed order was entered on May 25, 1994. A similar motion was filed on October 4, 1994, seeking documents which had been turned over to Independent Counsel by various witnesses. On November 2, 1994, an order was entered allowing the RTC to obtain those documents.

The RTC has issued administrative subpoenas for documents or a combination of documents and testimony as follows:

Aetna Life & Casualty Company
 George Betts
 R. J. Brown
 Citizens Bank of Jonesboro
 William Jefferson Clinton and Hillary Rodham Clinton
 Bonnie Crocheron
 Stephen Cuffman
 Harry Don Denton
 First Commercial Bank
 First National Bank of Wynne (fka Bank of Cherry Valley)
 First Ozarks National Bank (fka Citizens Bank of Flippin)
 Mary Freeman
 J. W. Fulbright
 Eugene Pat Harris
 Sarah Hawkins
 John Latham
 Madison Bank & Trust
 McCartney, Manning, McDonald & Guinn, Inc.
 Mitchell, Williams, Selig & Tucker
 Jim McDougal

Susan McDougal
 Meadors & Adams
 Sheffield Nelson
 Dean Paul
 Charles Peacock
 Peoples Bank & Trust
 George N. Plastiras
 Pulaski Bank
 R. D. Randolph
 Rose Law Firm
 Savers Savings
 Security Bank of Paragould
 Stephens Security Bank
 Jim Guy Tucker
 Union National Bank
 Virginia Surety
 Worthen Bank & Trust
 Betsy Wright

In addition, documents were obtained from other sources:

RTC criminal referrals
 Documents from other sources assembled by PM&S
 FDIC Reports of Examination and other documents
 Records of Ingersoll & Bloch
 Records of litigation between Madison Guaranty and Bill Henley
 Records of *Meux v. Earth Movers*
 Records of *Newgent, et al. v. Great Southern Land Co. et al.*
 Records of *United States v. James B. McDougal*

Forty-five depositions and interviews of individuals have been conducted.
 These witnesses are:

Lisa Aunspaugh
 Babette Baka
 George Betts
 Karen Bruton
 Gary Bunch
 Paul Castleberry
 Andrew Clark
 Jim Clark
 Bonnie Crocheron
 Betty Crum
 Steve Cuffman
 Harry Don Denton
 Vernon Dutton

Jack Files
 Davis Fitzhugh
 Mary Freeman
 Marshall Grant
 Eugene Pat Harris
 Sarah Hawkins
 Pat Heritage
 Webster Hubbell
 Charles James
 Robert Keller
 Paul Kerr
 Larry Kuca
 James McDougal
 Susan McDougal
 Lisa McEntire
 Steve Paar
 Dean Paul
 Robert Palmer
 George N. Plastiras
 Lisa Raglin
 R. D. Randolph
 John Selig
 Barbara Spears
 James B. "Breck" Speed III
 Sue Strayhorn
 Tom Tanner
 R. David Thomas, Jr.
 Thomas P. Thrash
 Tommy Trantham
 Chris Wade
 Seth Ward
 Bob Wilson
 Greg Young

Of these witnesses, the McDougals declined to answer questions, invoking the Fifth Amendment. Wade consented to an initial interview but refused a second interview, invoking the Fifth Amendment.

Interrogatories were served on William J. and Hillary R. Clinton and Christopher Wade. The Clintons answered the interrogatories propounded to them. Wade has not answered his interrogatories. Initially he indicated through counsel that he would submit to an interview. Later, after he became dissatisfied with his plea arrangements and sentencing, he indicated through counsel that he would invoke the Fifth Amendment.

As a result of this investigation, several reports were prepared detailing findings. These reports are:

- *Madison Guaranty Savings & Loan and Whitewater Development Company, Inc., A Preliminary Report to the Resolution Trust Corporation (Apr. 24, 1995).*
- *Madison Guaranty Savings & Loan and Whitewater Development Company, Inc., A Supplemental Report to the Resolution Trust Corporation (Dec. 13, 1995).*
- *A Report on Certain Real Estate Loans and Investments Made by Madison Guaranty Savings & Loan and Related Entities (Dec. 19, 1995).*
- *A Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm (Dec. 28, 1995).*
- *A Report on the Rose Law Firm's Conduct of Accounting Malpractice Litigation Pertaining to Madison Guaranty Savings & Loan (Dec. 28, 1995).*

In addition, co-counsel (Jordan & Keys) and RTC lawyers handled other parts of the investigation and issued reports of their own covering topics such as other real estate loans and investments, check kiting and the representation of Madison Guaranty by the law firm of Mitchell, Williams, Selig & Tucker.

III. HISTORICAL BACKGROUND - MADISON GUARANTY SAVINGS AND LOAN.

A. The regulatory history.

In October 1980, Jim and Susan McDougal acquired control of a commercial bank, Madison Bank & Trust Company ("Madison Bank"), formerly known as The Bank of Kingston. Jim McDougal soon became disenchanted with Madison Bank because, as a commercial bank, it did not provide a vehicle through which he could invest in real estate. Changes in the law meant that a savings and loan association could be such a vehicle.

In January 1982, the McDougals purchased an interest in Woodruff County Savings and Loan Association, which they later renamed Madison Guaranty Savings & Loan. Much of the acquisition was financed by bank loans, as had been the McDougals' acquisition of Madison Bank. With these two acquisitions, McDougal took on more than a half million dollars of personal

debt. Madison Bank and Madison Guaranty did not earn enough to service that debt, which increasingly burdened the McDougals. The McDougals' cash-flow problems came to a head between 1984 and 1986.

At acquisition, Madison Guaranty was a small traditional rural savings and loan on the brink of failure. McDougal once said that the Association's losses at acquisition would have exhausted its net worth within four months. McDougal's response was an attempt to grow the thrift out of its problems. In the first full year of McDougal's tenure, Madison Guaranty's total assets grew from \$6.6 million (at December 31, 1982) to \$17.0 million (at December 31, 1983). To achieve this asset growth, Madison Guaranty initially relied heavily on costly brokered deposits. By and large, Madison Guaranty used its new deposits to invest in real estate loans (\$8.5 million at December 31, 1983) and to invest in Madison Financial's projects (\$1.2 million at December 31, 1983).

Many of the direct investments were investments in real estate acquisition and development projects made through a newly created service corporation, Madison Financial Corporation ("Madison Financial"), which Madison Guaranty formed in February 1982. Madison Financial participated in real estate development projects both in Arkansas and as distant as the Campobello project in New Brunswick, Canada. These projects followed a pattern established by McDougal back in the 1970s. Typically, McDougal would locate tracts of land near lakes or streams, buy these tracts at a low price, subdivide the property and sell lots as vacation or retirement home lots on an installment basis, taking notes in return.

For the most part, Madison Guaranty financed Madison Financial's activities. Frequently Madison Guaranty's aggregate investment in Madison Financial exceeded the limits imposed by Arkansas law. Madison Financial maintained a checking account at Madison Guaranty, which was regularly overdrawn. In time, the negative balances grew so large that the balance shown on monthly statements started with a comma: There was not sufficient room on the statement to show a seven-figure negative number. Ultimately, Madison Guaranty simply deemed the overdraft an additional investment. By that point, it exceeded \$2 million.

As Madison Guaranty moved into real estate loans and investments, payments to affiliates of McDougal and payments between and among various real estate projects grew. Relatively large commissions typically were paid to Susan McDougal or her brothers, among others. Lots often were sold to McDougal's business associates in transactions fully financed by Madison Guaranty. In addition, money often moved between and among seemingly unrelated entities and ventures.

In January 1984, the FHLBB started a special limited examination of Madison Guaranty. The report of examination sent to Madison Guaranty's

Board of Directors on June 1, 1984 was sharply critical of the Association— Noting that scheduled items were almost double the association's net worth, it stated that "[t]he viability of the institution is jeopardized through the institution's current investment and lending practices in real estate development projects." It also noted improper recognition of substantial profits from real estate sales. The examiners determined that approximately \$565,000 of gains recognized by Madison Financial on the sale of real estate were improper. Adjusting Madison's books by that amount would have more than eliminated the net worth of the institution: It would have created a capital deficit of \$70,000. The relevant accounting issue under 12 C.F.R. § 563.23-1(f)(3)-(4) (1984)¹ was remediable, however, and management made changes that it contended allowed it to recognize the profits despite the criticism.

The report of examination also noted loan underwriting and documentation problems; poor appraisal practices; loans to affiliates; excessive concentration in real estate development projects; loans to borrowers without equity; over-reliance on brokered deposits; violations of regulations; poor records, systems and controls; and inexperienced management. In response, management filed a plan for addressing most of these deficiencies; for the most part, the FHLBB deemed this plan satisfactory.

The 1984 examination led to a supervisory agreement, to which Madison Guaranty's Board of Directors consented in July 1984. The supervisory agreement required compliance with net worth and affiliated party transaction regulations, and better policies and procedures.

In October 1984, Jim and Susan McDougal resigned as directors and officers of Madison Guaranty. They remained majority shareholders; Jim McDougal remained chairman and president of Madison Financial until July 1986; and by most accounts other than his own Jim McDougal continued to dominate Madison Guaranty.

In March 1986, the FHLBB began another examination of Madison Guaranty. The problems recognized in the 1984 report of examination not only remained but had become much worse. On June 19, 1986, the FHLBB wrote to the Board of Directors of Madison Guaranty to report on its interim findings. This letter alleged a violation of the July 19, 1984 supervisory agreement and noted Madison Guaranty's continued failure to comply with the FHLBB's net worth requirements.

¹ This regulation limited the recognition of gains on sales of real estate owned by a thrift. The subsections cited permitted current recognition of the gain on a seller-financed transaction only if the loan was secured by a first lien on the property, conformed to all the FHLBB's regulations for such loans (12 C.F.R. § 545.6, et seq.) and did not involve "preferential loan terms."

On July 11, 1986, the FHLBB called Madison Guaranty's Board of Directors to a meeting in Dallas. The directors were instructed to remove Jim McDougal as chairman and president of Madison Financial (he had resigned his Madison Guaranty offices in 1984) and John Latham as chairman of Madison Guaranty. McDougal and Latham resigned. A month later, the FHLBB entered a cease and desist order ("C&D") against Madison Guaranty. Shortly thereafter, the FHLBB undertook a special limited examination to determine whether Madison Guaranty's new management had complied with the C&D. The report determined that new management was attempting to comply with the C&D but had not complied in all respects and was paying itself excessive compensation.

Between 1984 and 1986, Madison Guaranty was audited by Frost & Company. In July 1986, Frost & Company was replaced by the accounting firm now known as KPMG Peat Marwick. By May 1987, KPMG Peat Marwick had concluded that the financial statements for 1985 audited by Frost & Company materially misstated Madison Guaranty's financial condition. As restated by KPMG Peat Marwick in an audit report issued May 22, 1987, Madison Guaranty's financial statements for 1985 showed a regulatory net worth of negative \$4.78 million as of December 31, 1985. Thus, after the issuance of KPMG Peat Marwick's audit report in May 1987, Madison Guaranty was known to be insolvent.

The FHLBB did not take over Madison Guaranty until February 1989; in large part because the Federal Savings and Loan Insurance Corporation ("FSLIC") lacked the money needed to take over all failed thrifts, and many other institutions presented worse problems and larger losses. On February 28, 1989, the FHLBB found that Madison Guaranty was insolvent and that grounds existed to appoint FSLIC Madison Guaranty's conservator. After the enactment of FIRREA, the RTC succeeded FSLIC as Madison Guaranty's conservator. On November 30, 1989, the Office of Thrift Supervision placed Madison Guaranty in receivership and appointed the RTC receiver.

B. Analysis of Madison Guaranty's failure.

This section presents a financial analysis, prepared by Tucker Alan Inc., of the failure of Madison Guaranty. This analysis is based primarily on the annual audited financial statements of Madison Guaranty from December 31, 1982 through December 31, 1987,² and the 1984 and 1986 FHLBB reports of examination.

² The 1982 and 1983 financial statements were audited by Deloitte Haskins & Sells. The 1984 and 1985 financial statements were audited by Frost & Company. Frost & Co. also prepared the Clintons' personal tax returns from 1978 through 1983. KPMG Peat Marwick audited Madison Guaranty's 1986 and 1987 financial statements, as well as the interim period ending June 30, 1986. KPMG Peat Marwick also re-audited the 1985 financial statements and made substantial modifications to Frost & Company's work.

1. Summary.

- **Madison Guaranty grew rapidly with little capital.** Total assets increased from \$6.6 million as of December 31, 1982 to \$17.0 million by December 31, 1983, \$49.0 million by December 31, 1984 and \$109.7 million by December 31, 1985. Madison Guaranty had very little capital or loan loss reserves to absorb losses. By December 31, 1985, according to Frost & Company, Madison Guaranty had just \$1,841,905 of regulatory capital (1.9% of deposits) and \$150,000 of loan loss reserves.
- **Madison Guaranty's "core" operations were unprofitable.** Initially growth was funded by high-cost, short-term brokered deposits. As Madison Guaranty grew, it did not generate enough of an interest margin to cover substantially increasing operating expenses.³ This alone (even without loss-causing real estate investments) could have caused Madison Guaranty's failure soon after it was acquired by McDougal.
- **Madison Guaranty was dependent on profits booked on sales of real estate.** Madison Guaranty recognized \$1,978,383 in gains from the sale of real estate in 1983 and 1984. Madison Guaranty's regulatory net worth was just \$700,000 by December 31, 1984. Without these real estate gains, Madison Guaranty's net worth would have been negative \$1,278,383 by the end of 1984.
- **Madison Financial's real estate projects ultimately lost substantial sums of money.** Madison Financial's first big real estate project (Maple Creek) ultimately caused a principal loss of approximately \$3.1 million to Madison Guaranty. Later projects, including Castle Grande, Campobello and six other real estate developments, ultimately caused more principal losses totaling approximately

³ Interest margin is the lifeblood of a sound thrift; it "pays the bills." Interest margin is the difference between interest income earned on loans and investments and interest expense incurred from deposits and other borrowings. "Core" operations are the normal and recurring functions of the thrift and generally include the interest margin and recurring sources of fee income (such as normal customer service charges) less normal operating expenses. Core operations exclude income sources that are dependent on business cycles (such as loan fees) or are nonrecurring, such as gains on sales of assets such as loans, investments or real estate.

\$6.6 million.⁴ These losses added to Madison Guaranty's insolvency.

- o **Whitewater did not meaningfully contribute to Madison Guaranty's failure.** As discussed in the reports on Whitewater, at most \$88,022 in funds traceable to Madison Guaranty was deposited into Whitewater. This did not cause Madison Guaranty's failure; that was caused by the much more substantial problems summarized above and discussed in further detail below.

2. 1982: The first year of McDougal control.

At the beginning of 1982, Madison Guaranty had total assets of \$3,873,310 and capital for financial reporting purposes of \$74,473. By the end of 1982, total assets had grown to \$6,595,244, and capital for financial reporting purposes was \$83,817.

In 1982, Madison Guaranty lost \$95,656. Contributing to that loss was a \$101,882 negative interest margin. In all the years of McDougal control, poor interest margins were a chronic financial problem; this greatly contributed to Madison Guaranty's failure.

3. 1983-1984: Rapid growth and questionable profits.

Madison Guaranty's total assets grew to \$17,059,979 by the end of 1983. This represented a large increase but it seems almost modest compared to what was to occur thereafter. By the end of 1984, Madison Guaranty's total assets had grown to \$48,961,154. In 1983 and 1984, little was done to provide and build reserves for the risk inherent in Madison Guaranty's rapid loan growth and development risk (real estate investments). As of December 31, 1984, Madison Guaranty had a total loan loss reserve of just \$75,000.

Madison Guaranty reported profits of \$117,127 in 1983. Within the revenues that generated that profit were gains on the sale of real estate totaling \$1,000,068.

4 Losses described in this section are derived from damages calculations prepared by RTC Investigations. The calculations include cash investment losses consisting of unrecovered acquisition and development costs and related loan losses; prejudgment interest and other lost opportunity earnings components have been *excluded*. On this basis, principal losses are estimated as of July 1995 as follows: Maple Creek, \$3.1 million; Castle Grande, \$7,051,207; Campobello, \$2,934,452; Brittany Point, \$259,374; Lake Faircrest, \$677,200; Greentree Farms, \$105,911; Fair Oaks, \$404,143; Gold Mine Springs, \$262,390; and Eden Park, \$483,796.

Madison Guaranty reported a loss of \$74,046 in 1984 and had virtually no interest margin, just \$48,047. This loss would have been substantially greater but for \$978,315 of gains on sale of real estate recognized during the year.

Thus, during the two-year period ending December 31, 1984, Madison Guaranty recognized net income of just \$43,081. Without the real estate sales profits of \$1,978,383 described above, Madison Guaranty would have lost \$1,935,302.⁵ This would have substantially more than absorbed its regulatory capital, reported to be \$700,000 as of December 31, 1984.

Real estate profits in 1983 and 1984 masked the explosion of Madison Guaranty's operating expenses. During McDougal's first year of control, 1982, the thrift incurred just \$213,984 of operating expenses, including an incredibly low \$86,793 of compensation cost. In 1983, operating costs increased to \$990,523 (including \$375,175 in compensation expense). Operating costs in 1984 increased even further to \$1,554,589 (including \$578,633 in compensation expense). Of total operating costs in 1983 and 1984, approximately one-half was spent by Madison Financial: \$524,730 in 1983 and \$721,247 in 1984.

From an accounting and regulatory point of view, the real estate profits presented two main issues: ~~revenue recognition issues and loss contingency~~ issues. The revenue recognition issues (mentioned above) centered on the fact that Madison Guaranty financed nearly all of Madison Financial's real estate sales, many of which were to friends and insiders who put up no real equity of their own.⁶ The loss contingency issues centered on the failure of Madison Guaranty and its audits to recognize losses once its real estate projects began to turn sour.

Without its reported profits on real estate sales, Madison Guaranty was insolvent by December 31, 1983. Reported regulatory net worth at that time was just \$354,994, bolstered by real estate profits of \$1,000,068. Without these profits, regulatory net worth would have been a negative \$645,074. Because Madison Guaranty's core operations were substantially unprofitable, only new capital infusions or other business opportunities would have restored Madison Guaranty to solvency. That never happened.

⁵ This calculation is an approximation. It is possible that certain incremental expenses might not have been incurred absent those sales (e.g., legitimate sales commissions), or that management might have controlled certain expenses had it not been for these real estate profits. Even so, the financial impact would still have been substantial.

⁶ There were other issues as well. Project cost accounting often was arbitrary. Large commissions were paid to friends and insiders. Contracts were awarded without any serious bidding or negotiation over price.

4. 1985: More rapid growth and more large reported real estate profits.

Madison Guaranty's total assets grew from \$48,961,154 at the end of 1984 to \$109,680,561 at the end of 1985. Madison Guaranty reported net income of \$829,614 in 1985. Included in gross income was \$1,857,684 from the sale of real estate. Without that income, Madison Guaranty would have lost more than \$1 million.

Once again, Madison Guaranty had a thin net interest margin, just 70 basis points, or \$460,513. This compares to operating expenses that had grown from \$1,554,589 in 1984 to \$2,826,278 in 1985 (including \$1,231,606 in compensation). Thus, Madison Guaranty's core operations continued to be substantially unprofitable. Even with the substantial real estate development profits recognized by the institution, Madison Guaranty's reported regulatory net worth of \$1,841,905 was below its minimum requirement of \$3,691,000, as reported in its December 31, 1985 financial statements audited by Frost & Company.

Between McDougal's acquisition and December 31, 1985, Madison Guaranty reported profits on the sale of real estate of \$3,836,067. This compares to aggregate reported net income for the same period (1982 through 1985) of \$777,039. These profits were derived from projects that ultimately resulted in losses to Madison Guaranty of approximately \$9.3 million. In future years, Madison Guaranty would have to recognize \$13.1 million in losses to turn these \$3.8 million in gains into \$9.3 million in losses. That process did not begin, however, until after the replacement of Frost & Company in 1986.

As noted, Madison Guaranty reported net income of \$829,614 for the year ended December 31, 1985. Frost & Company agreed with that number and issued an unqualified opinion. After FHLBB examiners discovered that Frost & Company's engagement partner had borrowed money from Madison Guaranty during the engagement, KPMG Peat Marwick was hired to perform the 1986 audit. As part of its services, KPMG Peat Marwick also performed its own audit of Madison Guaranty's 1985 financial statements. Its conclusions were quite different.

Instead of net income of \$829,614, KPMG Peat Marwick concluded that Madison Guaranty should have reported a net loss of \$5,188,718. With this restatement, Madison Guaranty's regulatory net worth became a negative \$4,776,427, approximately \$8,600,000 below minimum capital requirements.

5. 1986-1987: More losses.

Madison Guaranty's assets did not grow substantially after 1985. Total assets grew marginally to \$114,606,063 by the end of 1986, then shrank to \$109,330,064 by the end of 1987.

Madison Guaranty lost \$4,801,661 in 1986 and \$3,674,129 in 1987. These losses included provisions for loan and real estate losses totaling \$3,902,375. In total, KPMG Peat Marwick required \$9,546,367 of loss provisions and gain reversals for 1985 through 1987.

Madison Guaranty's deficit regulatory net worth at December 31, 1987 was \$12,186,000. According to RTC Investigations, later loan and real estate losses when combined with operating and liquidation costs would ultimately increase this deficit to approximately \$60 million.

From an economic point of view, Madison Guaranty's failure was the result of almost no capital and reserves, thin interest margins and substantially unprofitable core operations combined with unsuccessful real estate speculation and questionable payments to insiders. The McDougals' real estate activities were gambles resulting from the need to find income to mask the thrift's core problems while at the same time funding the money they paid to their relatives, insiders and themselves. The gamble failed, but by the time it did, the deficit at Madison Guaranty had grown from a few hundred thousand dollars in 1982 to approximately \$60 million today.

IV. RESULTS OF THE INVESTIGATION.

The results of the investigation are set forth in the five reports listed above on page 6. Those results should be read in light of the reports' discussions of the methodology employed in this investigation and its limitations.

7/2/86



Sam -

Madison Guaranty is in pretty serious trouble. Because of Bull's relationship w/ McDougal, we probably ought to talk about it. The meeting referred to in the attached letter has been moved up to July 11, 1986 and the FITBB has asked me to be ~~at~~ at the meeting.

Please note that while all of the FITBB restrictions in the letter are serious, #5 & 6 effectively put Madison out of business.

"Thank you for your support."

BEVERLY BASSETT
Securities Commissioner

BB

CCBW-884.

PRIVILEGED

From Dawn Pulcer

Re: July 11 Meeting - Supervision and MCSuit "Dance"

What follows are notes taken by me at the above-referenced meeting. Also attached is a complete list of the meeting's attendance.

Attached as exhibits are 1) a copy of the meeting's proposed agenda and 2) a copy of the voluntary cease and desist distributed to Madison University's Board of Directors.

Note that throughout the write-up, starred comments and observations are attributed to my perception of the statements made and appearances of the participants.

PRIVILEGED

Friday July 11 - 10 00 am.

Present: Walter Faulk
 Karen Bruton - FILB counsel
 Larry Stacy - supervision
 Rolf Coburn - supervising agent
 Chip Kieswiler - analyst
 Beverly Bassett }
 Charles Handley }
 Robert Young
 James Clark
 Darlene Ford
 Dawn Pulcer

John Selig - MGSUA counsel	
Breck Speed - attorney	
Steve Cuffman	
C. Dennis Edwards	
John Latham	} Bd. of Dir.
Jack Owen	
Sarah Hawkins	
Chuck Peacock	
	attorney
	minister
	chairman
	pres. & branch mg.
	secretary
	construction

PRIVILEGED

Faulk - opening comments
"will change today"

Chip - addresses net worth

- 1) short of requirement
- 2) rapid growth - 125% in 1983 - approx 30% in 1984
- 3) effect of 5 major projects - institution may be insolvent at this time

Rolf - comments on projects

- 1) misallocation of cost
- 2) recognition of income - R&D (profit not booked out)
- 3) auditor concerns - not independent

Chip - concerns about books and records

- 1) lean underwriting standards - inadequate
- concerns about compensation
- 1) inappropriate - especially Latham + McDougal's
10% override of net income

Rolf - expands on compensation

- 1) discloses knowledge of CFO Young's contract -
compensation based on income found on books net of
audit adjustments

Faulk - asks Latham about Young's employee contract

Latham - not an employment contract
more like a job description
not a guarantee, more incentive

Selig - requests examiner's give names of personnel employment
contracts to be provided *as provided previously*

001396

07422

PRIVILEGED

Chap - addresses affiliated loans

Rolf - addresses 'excessive payments to insiders

- 2) purpose to generate cash to McDougals, Henley - Lattin
- 3) purpose not to run institution in profitable manner but to benefit individuals

* COMMENT - Latham made audible smirk.

- 4) lend fl.p - added value
- 5) unsound judgment - not proper oversight by Boers
- 6) false, inaccurate, misleading information
- 7) limiting access to records
- 8) unprofitable operations - day to day
- 9) CFO Young's analysis of breakeven

Faulk - addresses Board's fiduciary responsibilities

- 1) needs to get true picture of institution
 - 2) examiners not thorough with classification of assets
 - 3) appears shop would be insolvent on 3 projects
 - 4) shop will probably be insolvent after appraisals
- questions Selig - "are you counsel for McDougals."

Selig - Replies "No." - acting as counsel for Association
McDougals have own counsel

Faulk - addresses 1) high rates on savings

- 2) FASB GG - not real net worth
- 3) "There will be a C+D."
- 4) "Love to see McDougal out of this business"
- 5) Can't understand management
- 6) Suggestions to Board
 - a) go back and request resignation of CEO
 - b) appoint interim CEO and monitor activity closely
 - c) possible expansion of Board
 - d) request for 407 - counsel may explain how serious

001397

PRIVILEGED

Faulk - asks Beverly Bassett if she wants to say anything
Bassett - "I" have no comment

* COMMENT - Strange Faulk asked for her comments as
Bassett's silence interesting

Selig - wants to make sure this is not a temporary C.D.
Faulk - "no"

Selig - Board came in spirit of co-operation
Board has met and is trying to resolve problems
Requests to discuss recent actions of Board

Faulk - refuses to listen to Selig
will listen later, not now
wants answer (response to) C.D.

* COMMENT - Observe Latham sweating profusely and
uncomfortable

Selig - continues to press for opportunity to state his case

Bruton - cuts off Selig
we appreciate what you're saying
however, there will be no change in C.D.

ADJOURN MEETING to allow Board to review
C.D.

PRIVILEGED

Resume: 11 30 am

* OBSERVATION - Latham again composed
Selg - Burton absent

Faulk - asks for Board's comments on C/D

Cuffman - states they need more time for evaluation.
they didn't have a good opportunity to review it
I can't sign without knowing more about it

Faulk - "just tell me as a director what you think of
this Association?" - asks Cuffman - notes fiduciary
responsibility - "I'm sure you know what that means"

Cuffman - "I'm not an accountant"

Faulk - "I know you are an attorney."
likes to talk to Board, not Board's counsel
directs "what do you think" question to Jack Owen

Owen - I'm in charge of Bradford, Augusta, McGrory branches
Has seen growth through branches - both CDs and demand dep
Spends 95% of his time in branches
Has been seeing growth of net worth
Opinion - we're doing O.K.

* OBSERVATION - Sarah Hawkins smiled at that.
We have been losing deposits in White, Jackson + Woodruff Co.
Competition paying higher rates
Savings we had are now going out because we're not
paying the rates

Faulk - to Owen "what about the projects?"

001399
07425

PRIVILEGED

Owen - Board met through discussions
 Feasibility studies - documented
 Appears to have fair return

Cuffman - has spent about 1 year on Board
 Board have all been active, have participated, were
 certainly well-intentioned
 Personally concerned about growth
 Impressed with net worth
 Didn't pay enough attention to the service corporation
 Service corp showed healthy profit - thought it was a
 good thing

Faulk - "Who did you rely on for information about the S.C."

Cuffman - "... Jim McDougal "

* COMMENT - Notable pause after Faulk's question.
 Cuffman appeared to hesitate before answering.

Cuffman - McDougal "clearly in charge of MFC."

Faulk - "Serah, what do you think?"

Hawkins - Look at Association from a regulatory standpoint
 Try to implement policies and procedures
 Try to hire qualified personnel - difficult to find in
 Little Rock area
 Now have staff we require - achieved in late '85
 Have been establishing procedures + controls
 Addresses regulatory requirements
 Business plans + subordinated debt consideration
 Trying to achieve net worth.

001400

* COMMENT - speech apparently rehearsed - too down pat to
 be spur of the moment - didn't really answer Faulk

07428

PRIVILEGED

Faulk - how much direct involvement by Board w/ MFI

Cuffman - "not enough."

Faulk - Does the Board have a problem with the owners?

*COMMENT - No answer immediately.

Edwards - "... To this point, no reason to question it."

Owens - "I haven't."

Cuffman - My opinion developments were doing well. Finance appears to be stable.

*OBSERVATION - 11:40 B. Speed leaves room.

Cuffman - Felt need to focus on savings and loan

Chip - directed to Cuffman - Were you aware of insider loans

Cuffman - not aware of insiders Has heard the words "straw men" used - don't agree

*OBSERVATION - 11:43 B. Speed returns

Hawkins - What do you mean by straws? Are you talking about just major loans or small lot loans?

Chip - Both major and others. Seems to be a number of small loans but they are adding up to a substantial amount - appear to be "reaching for income"
Notes poor market

Faulk - makes comment to Latham - generally CEO taking the criticism in and does - seems to offer "sympathy"

001401

07427

PRIVILEGED

Faulk - don't use incentives. Examiners brought a professional approach down. We have a consensus between examiners, people in Washington and supervision in Dallas.

* COMMENT - Faulk seems to admonish Board wants to make it clear Supervision agrees with examiners.

* OBSERVATION - 11:47 Bruton and Selig enter

Bruton - are there any specific questions on the C/D?

Selig - have had time to only glance at it

Have some questions - sure a detailed reading will raise even more questions. Can't seem to understand this action. (Appears to be struggling for words)
Am not in a position at this time to advise the Board on C/D

Faulk - addresses asset quality. Board doesn't have an in-depth understanding of MFC

Selig - "2 to 3 day review of Assets."

Authorized to address the ownership

Have met with the McDougals' and their attorneys

Have been informed they are willing to

1.) Terminate existing employment relationship with them

* COMMENT - Do they have an employment relationship?

Selig (cont) a) Jim McDougal is CEO of MFC

b) Neither Jim or Susan are directors

c) Are involved in real estate sales

Faulk - Who is on the Board of MFC?

Reply (by whom?) - Jim McDougal, John Latham, Craig Young

001402
07425

PRIVILEGED

Faulk - propose to reconstitute MFC's Board.

Review existing Directors

Try to make Directors of sense, the Director of sense
McDougal should be entirely removed

Selig - McDougal proposed to stay on with consulting role
and receive salary approved by the Board.

Faulk - No consultation - went home out

Selig - point 2.) McDougals can't sell their stock at this time.

Propose to put stock in a voting trust, naming one or
2 independent trustees subject to approval by Dallas
Stock will remain here until it can be sold or until

net worth is 110% of regulatory requirements or
direct investment within regs

Faulk - remove McDougal and Henley of any involvement

Selig - MFC has assets in land developments

Somebody has to sell

Faulk - can arrange compensation for sales, but not to
Henley or McDougals must be subject to approval

Can the Board engage a real estate agent and
specialist for an analysis of the projects?

Selig - That's another thing we are prepared to do plus some
kind of cash flow analysis.

*COMMENT - Selig seems to be babbling. Couldn't understand
what point he was trying to make

*OBSERVATION - Bassett frowning.

001403

07429

PRIVILEGED

Faulk - It is our opinion this is a FSUC shop. It's just a matter of time. -- will be insolvent

Need (1) a quality Board, (2) a competent and knowledgeable CEO and (3) an independent third party to make asset evaluation

System dictates we make changes

Must work together

What got this shop to this point?

If there's shenanigans, we will find out

What does the Board think?

* OBSERVATION - Faulk made very strong comments

Cutler smoking, appears nervous

Peacock kicked back, defensive, set frown

Hawkins sweating and concerned

Edwards reserved and concerned

Leatham sweating again, keeps looking to Selig

Selig (answering for Board)

Board is determined to take certain steps

Have no problems with third party reviews, but want to implement itself

Faulk - 3rd party must be a company approved by Dallas
Has to meet certain specifications

Selig - Board intends to expand its membership by adding 2 independent directors - difficult to find

Faulk - remember your CEO will be gone, leaving another vacancy to fill

* OBSERVATION - Leatham nodding

Faulk - Do you have a vice chairman?

Answer - "No"

001404

07430

PRIVILEGED

Faulk - Suggests Cuffman could possibly serve as interim Chairman and discuss members of committee to find out

Cuffman - "I suddenly feel very inadequate to the task"

Agrees to do it, do whatever is necessary

Concerned about the new CEO requirement

Questions whether they can find the person Dallas wants

Faulk - suggests they use a head hunter

Make best effort

Cuffman - deferring Latham

Can we retain John on the Board?

There may come a screening halt without him

Faulk - won't even try to discuss management succession

Feels no need to further discuss its inadequacy

Brin through Faulk - Latham may remain for a

60 day transition period, not on the Board

Can not serve as CEO

Activity must be carefully monitored by committee

Bessett - asks for clarification

Faulk - no officer capacity - that's the swap

We can quibble after the meeting

Cuffman - supportive of 3rd party concept - verification

Wants to expand Board - difficult without Directors

Liability Insurance

Faulk - make good faith effort

Cuts off further discussion on matter

001405

07451

PRIVILEGED 12

Bruton - when can I get an answer on the C-D
 *OBSERVATION - Letter visibly upset - trying to maintain tight control

Selig - not possible before Wednesday

Bruton - Fine. Will expect answer then. Call office here
 in Dallas to reach me. Make sure we have an
 understanding. May negotiate some time frames with the
 Supervision then

Faulk - Wednesday wants definite resolution of McDougal
 situation and report from 2 member committee on
 the CEO search, including name of 3rd party appraisal firm

Selig - brings out possible court alternative
 "This Board can't be bullied."

Bassett - Who is representing the McDougals?
 Answer: Tom Overby (Overheim) and Tim Dudley

Hawkins through Selig - wishes to discuss letter of June 17
 sent by Supervision - prohibited activities

*OBSERVATION - prepared statements

Hawkins + Selig

1.) Item 4(c)

Wish to continue offering project loans at 5%
 down payment, 95% loan to value but with
 revised sales commission. Salesmen will receive
 only 1/2 of cash down payment as commission, the
 rest to be deferred and recognized as payments
 are received

001406

*OBSERVATION - could be moving back entries - "reconciliation"
 new net sales advances on commissions, could be made up
 in other fees

07432

PRIVILEGED

Faulk - Which project loans are you referring to?

Hawkins - mainly Timberline and Castle Grande

* COMMENT - Timberline commissions amount to little - future

Selig - processing. What's wrong if purchaser is willing to put money down, is a good credit risk, assets has a satisfactory appraisal, etc?

* COMMENT - How do they define "good credit risk" & "appraisal"?

* OBSERVATION - Sarah Hawkins watching Jim Clark

* COMMENT - Uncertain of final resolution of this matter

Chip - It was never our intention from preventing you from honoring legally binding commitments.

Hawkins - What about ~~Campbell~~?

Faulk - Clarified that they were allowing activity from letter of June 19 until meeting of July 11 because the examiners' findings were not complete

Questions title

Hawkins - Title has been conveyed already. We have a title policy

* COMMENT - Outright lie, based on examiners' review

Ford - Sarah, I asked you for the title policy and you said there wasn't any.

Hawkins - What you asked me about was a loan to Chris Wade.

What followed was an interchange with Ford, Clark and Hawkins. No agreement was reached.

Hawkins - There must be some misunderstanding.

PRIVILEGED

Bruton - Then there should be no problem with getting these deeds to Mr Clark first thing Monday morning, right?

Hawkins - O.K

Faulk - I understand there has been a problem with getting records. I need assurance there will no longer be a problem

Cutler - (snirk) Well, there are 2 sides to every story but you have our assurance.

Faulk - Is it agreeable to bring difficulty to the 2 member committee?

Clark - Asks for clarification. Submit our requests to the committee? (Confirmation) Yes, its agreeable

Hawkins - Examiners had full access to everyone in the Association from the first day. Caused confusion. We didn't know exactly what they wanted. Sometimes they didn't know themselves. We have not withheld any information

Selig - addresses Madison Marketing + Madison Real Estate

Bruton - not included in C+D, because we have been told they are d/b/a's of MFC

Answer: May continue business but no commissions to Henley or McDougals

* OBSERVATION - Latham very uncomfortable. Applies Chapter:

PRIVILEGED

Hawkins - addresses Castle Sewer & Water

- * COMMENT - Confusion as to what Hawkins is trying to convey. Seems to be saying MFC has to contract with Castle Sewer.

Selig - MFC is currently ~~contracting~~ with Castle Sewer and Water to provide service to Castle Grande.

Clark - Why does MFC have to contract with them?

Selig - Purpose is to guarantee prices to Castle Grande purchasers

Faulk - Provide contract to examiners.

Wants to close meeting - was trying to hurry the Castle Sewer discussion

Hawkins - wishes to discuss one final point

Faulk - Fine, if she takes no more than 2 minutes.

Hawkins - What's the problem with the Wilson Co?

Clark - explanation Wilson was former employee - had consulting agreement with Campobello - found check going to him

Hawkins - What check?

Faulk - absolutely cuts off further discussion. States she may discuss this matter with Clark any time she wishes

Hawkins - We'll have to look at this again. We'll discuss it with Mr Clark

PRIVILEGED

Faulk requests Cuffman to remain after for a few minutes to discuss details Cuffman agrees

Meeting adjourned, approximately 12:45 pm

LAW OFFICE OF
ROSE LAW FIRM
 A PROFESSIONAL CORPORATION
 120 EAST FOURTH STREET
 LITTLE ROCK, ARKANSAS 72201
 PHONE 686-578-0121

1 hrc 2731
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 rdt 262

CLIENT: 8720

VARISON GUARANTY SAVINGS/LOAN
 MR. JOHN LITVIN, PRESIDENT
 14TH AND MAIN STREETS
 LITTLE ROCK, AR 72201

JAN-27 3, 1987

INV# 9389

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FOR LEGAL SERVICES RENDERED THROUGH JANUARY 30, 1986 BY W. P. CLINTON, T. THASCH, P. SCHVAY, K. SHERIN AND J. BIRCH:

WATTER: 1 - I.D.C.

REVIEW CONTRACT FOR SALES; TELEPHONE CONFERENCE WITH SETH WARD AND CHARLIE COOK, DARYL DOVER, ALTON BOWEN AT BEACH ABSTRACT; PEGGY ROGERS AND STEVE WADES MAKE CHANGES IN DOCUMENTS; REVIS, CHANGES IN AGREEMENTS; CORRESPONDENCE TO ALL PARTIES; ATTEND I. D. C. BOARD MEETING; PREPARE CORPORATE RESOLUTIONS; REVIEW TITLE COMMITMENTS; ATTEND CLOSING; REVIEW BILL OF ASSURANCES; MEETINGS WITH SETH WARD, BOB WILSON AND CHARLIE COOK; RESEARCH ON WHAT APPROVALS, PERMITS, ETC., ARE NECESSARY TO OPERATE LEASED AND WATER FACILITIES; MULTIPLE TELEPHONE CONFERENCES WITH STATE AND COUNTY AGENCIES; MEET ABOUT UTILITY STATUS; CONFERENCES WITH SETH WARD REGARDING PURCHASE FROM BRICK LILE AND PROPOSED INDUSTRIAL DEVELOPMENT ON SITE; RESEARCH ON STATE LAW GOVERNING LIQUOR PERMITS; RESEARCH AT COUNTY CLERK'S OFFICE AND ELECTION COMMISSION; TELEPHONE CONFERENCES WITH ELECTION COMMISSION; NUMEROUS TELEPHONE CONFERENCES WITH DARYL DOVER

TOTAL FOR SERVICES \$4,551.50

DISBURSEMENTS

ONE COUNTY MAP
 XEROX COPIES

2.55
 16.50

DISBURSEMENTS TOTAL \$19.05

TOTAL WATTER \$: \$4,470.35

A/R
 transfer

PAID 4670.35

CK #

DATE 1-30-86

ROSE LAW FIRM

DKSN029010



INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, JANUARY 31, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Would you stand for the purposes of taking the oath.

[Whereupon, Bobby J. Nash, Director of Presidential Personnel and Assistant to the President of the United States, Former Senior Executive Assistant for Economic Development, Little Rock, Arkansas; and Davis Fitzhugh, Former Vice President of Madison Guaranty Savings & Loan, Little Rock, Arkansas; were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Let me first of all thank the witnesses for being here. Mr. Nash if you have a statement that you would like to make to the Committee, we would be very pleased to receive it.

SWORN TESTIMONY OF BOBBY J. NASH DIRECTOR OF PRESIDENTIAL PERSONNEL AND ASSISTANT TO THE PRESIDENT OF THE UNITED STATES FORMER SENIOR EXECUTIVE ASSISTANT FOR ECONOMIC DEVELOPMENT, LITTLE ROCK, ARKANSAS

Mr. NASH. Senator, I do not have a statement. I'll be very happy to answer the questions.

The CHAIRMAN. Mr. Fitzhugh, if you have an opening statement, we would be very pleased to receive it.

SWORN TESTIMONY OF DAVIS FITZHUGH FORMER VICE PRESIDENT OF MADISON GUARANTY SAVINGS & LOAN, LITTLE ROCK, ARKANSAS

Mr. FITZHUGH. No, sir, I have no statement.

The CHAIRMAN. Why don't we proceed then. We have two panels today.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman. Welcome.

Mr. Fitzhugh, in 1985, you joined Madison Guaranty Savings & Loan?

Mr. FITZHUGH. Yes, that's correct.

Mr. CHERTOFF. You have to pull the mike a little bit closer. What was your job?

Mr. FITZHUGH. I was primarily in real estate activities.

Mr. CHERTOFF. Again, let me just ask you to pull the mike a little closer.

Mr. FITZHUGH. All right.

Mr. CHERTOFF. You say you were in real estate activities. Just briefly, what did that involve?

Mr. FITZHUGH. Well, Madison was in the process of renovating the street on which their building was located, South Banks Street. It was a very decrepit part of town. One of the things I was hired to work on was to purchase some of the buildings and make sure the renovations were going properly.

Mr. CHERTOFF. Mr. Fitzhugh, were you aware of the way in which Mr. McDougal was raising funds within the savings and loan in order to get the money to increase the capital that the savings and loan had?

Mr. FITZHUGH. The main thing that I can recall, at this point in time, is that he tried to solicit large CD's from people say age 60 and over.

Mr. CHERTOFF. When you say "CD's," do you mean he tried to get people who were senior citizens to buy certificates of deposit at the savings and loan?

Mr. FITZHUGH. Yes. If they had one that was maturing, roll it over or in one way or another attract bulk sums of money from senior citizens.

Mr. CHERTOFF. In fact, did he go out in the Rolls Royce and drive some of these senior citizens down to the savings and loan so that they could sign up for the CD's?

Mr. FITZHUGH. Well, I know that there was a Bentley that was owned by the savings and loan, and that may have taken place. I'm not entirely sure, but it was at least talked about.

Mr. CHERTOFF. Were you also aware from the time you started to work at the savings and loan that Mr. McDougal knew then-Governor Clinton?

Mr. FITZHUGH. I did not know that when I joined the savings and loan, but I learned that afterwards, yes.

Mr. CHERTOFF. How did you learn that?

Mr. FITZHUGH. Well, I guess it became more or less just common knowledge to people working down there.

Mr. CHERTOFF. Were you present when Mr. McDougal had phone conversations with Governor Clinton?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. Did you see Governor Clinton yourself?

Mr. FITZHUGH. No, sir, not in the savings and loan.

Mr. CHERTOFF. Not at the savings and loan, but it was common knowledge within the savings and loan that he had a relationship with Governor Clinton?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. Are you familiar with a deal called the IDC or the Industrial Development Company deal that was carried out in the fall of 1985?

Mr. FITZHUGH. Yes, I am.

Mr. CHERTOFF. Briefly, and there's a map over there to your right, am I correct that this deal involved property that was on the outskirts of Little Rock both north and south of a road called 145th Street?

Mr. FITZHUGH. Yes, that's correct.

Mr. CHERTOFF. Very briefly, what did you understand was the involvement of the savings and loan and more particularly its underlying investment company, Madison Financial, in that deal?

Mr. FITZHUGH. Well, the IDC was a company that had done a lot of development for industrial parks in the Little Rock area, and I believe at the time their main parties were either in ill health or some of them I believe had recently died. So I believe the IDC property, perhaps, people knew it was on the market or just assumed it was on the market. My understanding is that Madison purchased the entire assets of the IDC; and that included some of this property as well as some other things located in the city of Little Rock.

Mr. CHERTOFF. So your understanding was that, in practical effect, what Madison did was purchased all of this tract of property being sold by the IDC; right?

Mr. FITZHUGH. When you say "in practical effect," I think there was some knowledge that Seth Ward was involved and perhaps Seth owned part and Madison owned part. I think there was a differentiation between who technically owned what.

Mr. CHERTOFF. Isn't the way the deal went down that Seth Ward was the nominal owner or the straw man in whose name the northern part of the property was purchased and Madison Financial took in its own name the southern part, but your understanding was that in reality all the money was Madison's money?

Mr. FITZHUGH. I couldn't honestly say I understood who had all the money, because I just wasn't really privy to that sort of thing, but as far as what you talked about, Seth Ward owning the north side and Madison the south, that was my understanding.

Mr. CHERTOFF. And your understanding was that the actual purchase was split that way because Madison needed to keep the amount of property or the amount of investment in its own name below a certain amount to comply with State regulations; right?

Mr. FITZHUGH. Well, I knew that Madison did have only a certain amount of assets that could be placed in what we called MFC, and I believe that—or I was told that was one of the reasons that this was split up that way, but that's secondhand knowledge to me.

The CHAIRMAN. Who told you that?

Mr. FITZHUGH. I don't know that anyone necessarily told me that, but that was just again kind of common knowledge at the savings and loan.

The CHAIRMAN. It was common knowledge?

Mr. FITZHUGH. It was to me.

The CHAIRMAN. So Seth Ward really was the nominal holder of these properties so that the bank would not be in violation of the law; is that correct?

Mr. FITZHUGH. No, not necessarily that part of it. Simply that if I had any dealings, I dealt with the savings and loan. I never dealt with Seth Ward on the purchase of my Levi Strauss building. I never dealt with Seth Ward.

The CHAIRMAN. OK, good.

Mr. CHERTOFF. Well, let's get to that. Because what happened was you yourself wound up becoming the purchaser of one of those pieces of property in the northern part of—above 145th Street; is that right?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. Can you identify for us using the numbers on that map which property it is?

Mr. FITZHUGH. Number 1.

Mr. CHERTOFF. So number 1 is just north of that highway. How did you come to be a buyer of that piece of property? Was that known as the Levi Strauss building?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. How did you come to be an owner of the Levi Strauss building?

Mr. FITZHUGH. Well, Mr. McDougal asked me to come up into his office and asked me if I had a real estate license. And at the time I had an Arkansas broker's license that was active, and I replied yes. I was then in one way or another, I don't know if I was told or it just came to be that I was going to buy that building.

Mr. CHERTOFF. You didn't look to buy that building; right?

Mr. FITZHUGH. I had never seen the building.

Mr. CHERTOFF. You didn't see the building before you bought it?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. But Mr. McDougal made you understand that you were going to buy the building; right?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. How did you get the money to buy the building?

Mr. FITZHUGH. I didn't need any money to buy the building.

Mr. CHERTOFF. That's because someone let you have the money. Who was that?

Mr. FITZHUGH. Well, the reason why I was asked if I had an Arkansas broker's license is that enabled the savings and loan to pay me a commission, which in turn became the downpayment; and the balance of the money was loaned to me.

Mr. CHERTOFF. It was loaned to you by Madison Guaranty Savings & Loan; right?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. So just to make sure we understand the deal, Mr. McDougal came to you and you got the understanding from him that you were going to buy a piece of property you had never seen before; right?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. You received the downpayment because he gave you a real estate commission on the sale of property that you yourself were buying; right?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. Then the purpose of getting that commission, in fact, the amount was specifically picked in order to give you the

money to use as the downpayment for that purchase of the property; right?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. And then the balance of the money came from a loan from Madison Guaranty Savings & Loan?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. You didn't pull any money out of your pocket?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. It wasn't a property you had ever seen before?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. And in terms of carrying the cost of the loan, it was supposed to be carried by the rent being generated by the building; right?

Mr. FITZHUGH. That was the idea.

Mr. CHERTOFF. So essentially the property was being parked or warehoused with you at Mr. McDougal's instructions?

Mr. FITZHUGH. That's one way you could look at it. Now, of course, you may ask me later, it was a nonrecourse note. If you want to get into that later, we can.

Mr. CHERTOFF. I'm about to get to that right now. We've established that the money for this came from either this brokerage commission Mr. McDougal had you paid or by the loan which Mr. McDougal's savings and loan let you have. But you, I guess, pretty sensibly didn't want to be personally on the hook for this transaction; right?

Mr. FITZHUGH. I would not under any circumstances have done it without a nonrecourse note.

Mr. CHERTOFF. So Mr. McDougal or his people working with him agreed that in getting the loan from the savings and loan for the purchase price of the property, it would be nonrecourse, which means that if you didn't—

The CHAIRMAN. Wait, wait, wait. Let him tell us.

Mr. CHERTOFF. Tell us what a nonrecourse note is.

Mr. FITZHUGH. Nonrecourse, in the simplest of terms, means that had I chosen not to repay the bank any of that money I signed the note for, then they could come and take that property from me, but other than that I would not have to pay them a dime. Their only recourse was for the mortgage on that property and that's it.

The CHAIRMAN. They could not sue you, you would not be personally liable?

Mr. FITZHUGH. No personal liability whatsoever.

Mr. CHERTOFF. So the extent of what the bank would have or the savings and loan would have if you didn't make the payments was they could go and reclaim the property.

Mr. FITZHUGH. Exactly.

Mr. CHERTOFF. But you had no personal liability or exposure?

Mr. FITZHUGH. None.

Mr. CHERTOFF. So basically, the savings and loan—the downpayment came from the commission paid by Madison, the loan for the rest of the purchase came from Madison, and Madison agreed as part of this arrangement that if in fact the loan wasn't repaid, they wouldn't go against you personally, they would only go back and reclaim the property?

Mr. FITZHUGH. That's correct. I drafted the nonrecourse language and put it in the note myself.

Mr. CHERTOFF. And they signed it?

Mr. FITZHUGH. Well, they agreed to it, yes.

Mr. CHERTOFF. Also, there was supposed to be an appraisal of some sort in connection with this property that I think someone by the name of Betts made?

Mr. FITZHUGH. I believe that's right.

Mr. CHERTOFF. Who is Mr. Betts?

Mr. FITZHUGH. All I know is that he's a real estate appraiser. I don't know that I've ever met the man.

Mr. CHERTOFF. Did you come to learn what he had appraised the property for?

Mr. FITZHUGH. At some point in time, and I don't know if it was before the purchase or after the purchase.

Mr. CHERTOFF. What did he appraise the property for?

Mr. FITZHUGH. I think it was like a million one or a million two. I'm not exactly sure but somewhere in that neighborhood.

Mr. CHERTOFF. Was it your understanding that that was anything like what the real value of the property was?

Mr. FITZHUGH. The property was leased at the time, so we knew what the cash flow was. And you could capitalize the cash flow and make a reasonable determination of what the value was of the building. I don't think you could come up with that high figure.

Mr. CHERTOFF. Didn't you say, in fact, that the amount of the value of the building in your opinion was closer to about \$300,000 or \$400,000 than over a million?

Mr. FITZHUGH. That would be my opinion. You know, it's nice to buy things cheap if you can.

Mr. CHERTOFF. So the appraisal that was part of this wonderful transaction here was, in your opinion, about double what the real value of the property was based upon the cash flow being generated from the property?

Mr. FITZHUGH. Yes, that would be a fair assumption.

Mr. CHERTOFF. But you didn't care about that because with a nonrecourse note, if it turns out that the property couldn't pay the bill on the loan, all that would happen is the savings and loan would take the property back and you wouldn't be on the hook?

Mr. FITZHUGH. That's correct. And for the immediate future, there was enough money coming in from the payments from Levi to pay the insurance, pay the taxes, pay the note. So it was a situation that would neither cost nor make me any money for at least the immediate future.

Mr. CHERTOFF. What really happened is the bank or Madison Financial, which originally had the property, either in its own name or in Mr. Ward's name, and I think this piece of property actually came from the part in Mr. Ward's name, they didn't really shift the risk to you. I mean, you never actually were at risk in this transaction. All that happened is they moved this property off the books of, I guess, Seth Ward and they moved it into your ownership, but at no risk to you, with no money out of your pocket and the net result is to show a profit to Madison Financial or to Mr. Ward without you actually ever having assumed any personal liability on the transaction?

Mr. FITZHUGH. That would probably be the net effect from Madison's standpoint.

Mr. CHERTOFF. So essentially what they did was it was a way of warehousing this property to show a profit; right?

Mr. FITZHUGH. From their standpoint that's probably correct.

Mr. CHERTOFF. Also while we are on this issue of Seth Ward and Madison Financial, I'm going to ask that we put up two documents and make sure you have them. It's 71997 and 71996, which are two warranty deeds that were used to convey this property to you on October 25, 1985. And I'm going to ask you if you have ever seen these before.

Mr. FITZHUGH. This is where Seth Ward deeded it to MFC?

Mr. CHERTOFF. Yes.

Mr. FITZHUGH. I don't know if I have seen them or not. I very well may have.

Mr. CHERTOFF. Would you agree with me that when you look at these two deeds together, what you see is that this piece of property you bought, this Levi Strauss building, the way you actually got title to the property or ownership of the property was Mr. Ward deeded it to Madison Financial and then Madison Financial directly turned around and deeded it to you?

Mr. FITZHUGH. That's certainly what it looks like. And I notice down here it says I prepared this document, so I imagine I did.

Mr. CHERTOFF. What we know now looking at these documents is that the Levi Strauss building which you originally bought under this arrangement with Mr. McDougal was held originally by Seth Ward, but the way you got the property was Seth Ward transferred it to Madison Financial and Madison Financial transferred it to you; right?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. And of course, that is consistent with what we know about that original transaction in which Seth Ward took some of this property in his own name; right?

Mr. FITZHUGH. Correct.

Mr. CHERTOFF. Now let me ask you one other question before I turn to you, Mr. Nash. A question has arisen about Castle Grande. My understanding is that in your mind, Castle Grande related to the portion of this entire tract of property that was below 145th Street; right?

Mr. FITZHUGH. To my mind, Castle Grande was a separate segment within the entire IDC purchase that is south of 145th Street.

Mr. CHERTOFF. But it is also true, is it not, that within the savings and loan, people referred to the northern part, including the building that you purchased, as part of the Castle Grande property; is that right?

Mr. FITZHUGH. That, I don't know.

Mr. CHERTOFF. Well, let me help you out a little bit. I want to put up a picture of a check, I don't think it has a Bates number, but we'll make sure you have a copy of it. It's November 1, 1985. It's for \$50,000, which I think was your commission that was used as the downpayment, drawn on the Madison Real Estate Company Business Account. Is that the account that was used to pay the commission you used as the downpayment?

Mr. FITZHUGH. I recall getting this check and I sat down and signed it in the office of the chief financial officer at Madison.

Mr. CHERTOFF. When you say that, you mean you endorsed it?

Mr. FITZHUGH. Yes, I endorsed it. But I didn't pay any attention to what account it was written on or anything like that.

Mr. CHERTOFF. Well, to go through it, on the back of the check which is lower down, you say, "Pay to the order of Madison Savings & Loan, Davis Fitzhugh"; right?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. So you took this brokerage fee check, and you turned it around and used it as the downpayment as evidenced by what you have on the back of the check; right?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. Now where it says "for" on the bottom, the notation, you didn't write that notation; right?

Mr. FITZHUGH. No, that's not my handwriting.

Mr. CHERTOFF. But you can read it. It says, "Sale of building C, Castle Grande"; right?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. I also want to show you a set of minutes which have Bates stamp 91 on them which we're going to put up on the Elmo. I believe this indicates minutes that relate to the purchase of the southern part of the property when the original IDC purchase took place, indicating that the acreage to the south was going to be called Castle Grande Estates and that that decision had been made as of September 12, 1985, as evidenced by the minutes of the Board of Directors of the Madison Financial Corporation. Do you see that?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. You would agree with me that that's what these minutes say?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. Mr. Nash, what is your current position?

Mr. NASH. My current position is Director of Presidential Personnel and Assistant to the President.

Mr. CHERTOFF. You knew Bill Clinton as Governor of Arkansas?

Mr. NASH. Yes, sir.

Mr. CHERTOFF. Did you hold a position with Governor Clinton in the 1980's in his administration in Arkansas?

Mr. NASH. Yes, I did.

Mr. CHERTOFF. What was that position?

Mr. NASH. I was Senior Executive Assistant for Economic Development.

Mr. CHERTOFF. Mr. Nash, did there come a time in 1985 or 1986 that you were with Governor Clinton when he paid a visit to Jim McDougal?

Mr. NASH. Yes. I do not remember the year.

Mr. CHERTOFF. Was it in the mid-1980's?

Mr. NASH. I do not remember the specific year but sometime between 1985 and 1989.

Mr. CHERTOFF. And would you agree with me that it is more likely that it was around the 1985-1986 time period than the 1989 time period?

Mr. NASH. I couldn't say that, sir.

Mr. CHERTOFF. Did you say that in your deposition?

Mr. NASH. I can't remember. I could have—if I was asked to guess about it, I may have guessed it was closer to 1985 than 1989, but I don't remember.

Mr. CHERTOFF. Tell us how did you come to be with Governor Clinton when he paid this visit to Mr. McDougal?

Mr. NASH. I was traveling with Governor Clinton to some event. I don't remember the particular event. And on the way back from the event to the office, we stopped at a trailer where Mr. McDougal was located.

Mr. CHERTOFF. Was that trailer in the vicinity of 145th Street?

Mr. NASH. Yes, I remember it being in that vicinity.

Mr. CHERTOFF. When you say we stopped at the trailer, you were in a car with Governor Clinton?

Mr. NASH. Yes, sir.

Mr. CHERTOFF. Was there anybody else in the car?

Mr. NASH. There was a State trooper.

Mr. CHERTOFF. Whose idea was it to stop at this trailer?

Mr. NASH. I don't remember specifically whose idea it was to stop at the trailer.

Mr. CHERTOFF. Did it seem to you that it was the trooper's idea?

Mr. NASH. I don't remember whose idea it was to stop at the trailer.

Mr. CHERTOFF. Was it your idea?

Mr. NASH. I don't remember.

Mr. CHERTOFF. Did you know Mr. McDougal?

Mr. NASH. Yes, I did know Mr. McDougal.

Mr. CHERTOFF. Can you think of any reason why you would have wanted to stop and see him at his trailer office?

Mr. NASH. I can't think of a reason.

Mr. CHERTOFF. So that leaves Governor Clinton; right?

Mr. NASH. I don't remember who suggested it.

Mr. CHERTOFF. Tell us what happened. Tell us about this visit to Mr. McDougal in the trailer.

Mr. NASH. On the way back from an event, I remember us looking for McDougal's office in this vicinity of 145th or south of Little Rock, and finding it and spending about 5 minutes, maybe 10 minutes, I can't remember exactly how long, talking with him.

Mr. CHERTOFF. So someone in the car decided to make a stop to see Mr. McDougal at the trailer; right?

Mr. NASH. That's correct.

Mr. CHERTOFF. Whoever that person was knew that at that point Mr. McDougal had his office in the trailer; right?

Mr. NASH. I don't know that.

Mr. CHERTOFF. Or knew he would be at the trailer?

Mr. NASH. I don't know that.

Mr. CHERTOFF. You had no idea where Mr. McDougal had his office at the time that you paid this visit; is that fair to say?

Mr. NASH. I assumed he had an office in that area because he had a development in that area.

Mr. CHERTOFF. Well, he had a couple of developments there, but whoever in that car, you or the Governor or the trooper, who decided they wanted to pay this visit, they made a decision to stop at the trailer; right?

Mr. NASH. That's correct.

Mr. CHERTOFF. Now describe the trailer.

Mr. NASH. It was a trailer that—a house trailer, I would call it, that people live in.

Mr. CHERTOFF. When you and Governor Clinton got inside the trailer, what did you see?

Mr. NASH. When we got inside the trailer, Jim McDougal was standing in the trailer as you walked in the double-glass door, I think it was a double-glass door, I'm not sure.

Mr. CHERTOFF. What was the setup like in the trailer? Was it residential or like an office?

Mr. NASH. I remember it looking like an office.

Mr. CHERTOFF. Was there anybody else there?

Mr. NASH. Well, I remember seeing a lady down what looked like a hall.

Mr. CHERTOFF. Like a secretary?

Mr. NASH. I don't know what her role was but I just remember seeing a lady sitting down the hall.

Mr. CHERTOFF. Did the trooper come in with you?

Mr. NASH. I don't remember the trooper coming in at the beginning, but I think the trooper came in to say we needed to go. I vaguely remember that.

Mr. CHERTOFF. So I guess we can conclude from that that the visit, whoever wanted to pay the visit, it wasn't the trooper since the trooper actually didn't go in to visit with Mr. McDougal. Is that a fair inference, you think?

Mr. NASH. The trooper did not go in the trailer when we first walked in.

Mr. CHERTOFF. Did you, the Governor, and McDougal sit down?

Mr. NASH. I don't remember that we sat down.

Mr. CHERTOFF. Well, what did you talk about? What was the conversation?

Mr. NASH. Casual conversation.

Mr. CHERTOFF. About what?

Mr. NASH. Oh, I remember, I think the weather was nice. I didn't have a coat on so I think it was nice. We talked about pleasantries. I remember we may have asked how his wife was doing.

Mr. CHERTOFF. That would be Susan McDougal?

Mr. NASH. That was his wife.

Mr. CHERTOFF. Anything else?

Mr. NASH. I remember commenting about the blue jeans, I think, that Jim McDougal was wearing, I believe, vaguely.

Mr. CHERTOFF. So the subject of blue jeans came up. Is that fair to say?

Mr. NASH. Yes.

Mr. CHERTOFF. Are you familiar with the Levi Strauss building on that property?

Mr. NASH. I am familiar that there's a Levi Strauss plant out in that area in an industrial park.

Mr. CHERTOFF. You know Levi Strauss makes blue jeans?

Mr. NASH. Yes, sir, I do.

Mr. CHERTOFF. In this discussion, in this meeting in which someone in the car decided that you all should stop and have on this particular day, did the subject of blue jeans come up?

Mr. NASH. I remember the fact that—I remember vaguely that Jim McDougal was wearing blue jeans, 501 blue jeans, I believe.

Mr. CHERTOFF. What was discussed was what Jim McDougal was wearing?

Mr. NASH. I'm sorry?

Mr. CHERTOFF. What was discussed was what Jim McDougal was wearing?

Mr. NASH. I remember that subject coming up.

Mr. CHERTOFF. What prompted a discussion of blue jeans out at the trailer at 145th Street across the road from the Levi Strauss blue jeans building? Is there any connection in your mind between the two of those facts, both of those facts?

Mr. NASH. No.

Mr. CHERTOFF. There was no discussion in this meeting about the fact that there was a Levi Strauss building on the property that Mr. McDougal wanted to sell?

Mr. NASH. I'm sorry, say that again?

Mr. CHERTOFF. There was no discussion at this trailer meeting that there was a Levi Strauss building on the property that Mr. McDougal wanted to sell?

Mr. NASH. No, I do not remember any discussion like that.

Mr. CHERTOFF. The only thing you remember about blue jeans—was there a discussion about blue jeans generally?

Mr. NASH. I remember the discussion being that Jim McDougal was wearing 501 blue jeans, and we were in suits and the discussion may have been about that. It probably was.

Mr. CHERTOFF. Let me read from your deposition at page 59.

The CHAIRMAN. Why don't you get out your deposition, have your counsel get it out for you.

Mr. CHERTOFF. On pages 59 and 61. We will take a moment to get that to you.

Mr. NASH. I'm sorry, would you refer me to the page?

Mr. CHERTOFF. Page 59 of your deposition.

Mr. NASH. Which part?

Mr. CHERTOFF. Let's start at line 4, page 59:

Question: Do you recall anything more about the discussions?

Answer: No, I do not.

Question: Just you have a vague recollection it had to do with this blue jeans plant?

Answer: It had to do with blue jeans, not the blue jean plant.

Question: It didn't have to do with the plant, just blue jeans generally?

Answer: Just like blue jeans generally.

Question: The manufacture of blue jeans?

Answer: I think the blue jeans may have been by Levis. The plant is Levi.

That's the plant on that property, right, you're referring to?

Mr. NASH. There is a Levi Strauss plant in that area.

Mr. CHERTOFF. Continuing on line 16—

Senator SARBANES. On the property?

The CHAIRMAN. Wait, Senator. You know, this is important. Let him continue and you'll have an opportunity to make your point.

Senator SARBANES. Mr. Chertoff said the plant on that property.

The CHAIRMAN. Wait a second. Senator, I'm not going to quibble with you. Go ahead, Mr. Chertoff.

Mr. CHERTOFF. Where was the blue jeans plant?

Mr. NASH. The blue jeans plant is in an industrial park outside of Little Rock.

Mr. CHERTOFF. Is it near here?

Mr. NASH. Near where?

Mr. CHERTOFF. Near this property at 145th Street where the trailer was?

Mr. NASH. I don't remember. I know it is in an industrial park outside of Little Rock.

Mr. CHERTOFF. Now let's continue with your answer:

Answer: For some reason, blue jeans, maybe at that time blue jeans—Levi blue jeans were hot or something. I don't know. I don't know.

Question: So you don't even know whether it had to do with that particular Levi Strauss plant in Arkansas?

Answer: Oh, no, I don't remember that.

Let's go to page 61. Actually, 60, line 20.

Question: Is it fair to say that's what your best recollection is?

Answer: Let me say what my best recollection is, is that sometime between 1985 and 1989, it may have been closer to 1985 than 1989, I was at a trailer with Jim McDougal, Bill Clinton and I were talking for a short period of time. And I remember the discussion having to do with blue jeans but I don't remember how blue jeans came up. I remember that there were other pleasantries like hello, how are you and that kind of thing that you would normally do.

I remember the meeting being shorter rather than longer, I think earlier you said something about was it an hour, was it half hour. I'm thinking that it was maybe much shorter than that, like close to 5 or 10 minutes, and I remember that we stood up. I don't remember sitting down.

I remember that I saw a woman in the trailer who was not in the area where we were, but you could look back down through the trailer and there was a woman sitting at a desk who looked like she was, I don't know whether she was writing or typing, I can't remember. I don't remember who this woman was or I didn't recognize her.

There was a trooper who may or may not have gotten out of the car and come in to get us to go. I think I vaguely remember him getting out of the car because the troopers would always be pushing him to go because he would always be late and stop places that were not on his itinerary. That's what I remember.

So as of your deposition you didn't remember anything about this having been prompted merely by Mr. McDougal wearing 501 jeans; is that correct?

Mr. NASH. I'm sorry, ask the question once more, please.

Mr. CHERTOFF. The question is as of the deposition, which was taken about a month ago, you didn't remember how the blue jeans came up, and you didn't remember anything about 501 jeans that Mr. McDougal was wearing; correct?

Mr. NASH. I do not remember mentioning 501 blue jeans during the deposition.

Mr. CHERTOFF. Now this meeting which you have described as having to do with pleasantries and blue jeans came up again more recently; isn't that correct? Didn't Bruce Lindsey call you about it?

Mr. NASH. Yes.

Mr. CHERTOFF. In 1993, Bruce Lindsey called you about it; right?

Mr. NASH. I don't remember exactly when it was.

Mr. CHERTOFF. Well, let's go to page 38.

Question: Do you recall when Mr. Lindsey asked you about any meetings you might have gone to with the Governor and Mr. McDougal?

Answer: Well, it's been probably—I remember it being when I was at Agriculture.

Question: Sometime in 1983—1993, excuse me?

Answer: Probably.

Were those the questions you were asked and the answers you gave in your deposition last month?

Mr. NASH. Yes.

Mr. CHERTOFF. Did you find it odd that Mr. Lindsey would call you up and ask about this particular meeting?

Mr. NASH. No, I didn't find it odd.

Mr. CHERTOFF. And that's not the only time he asked you about it, is it?

Mr. NASH. No.

Mr. CHERTOFF. He asked you again after Thanksgiving; correct?

Mr. NASH. I don't remember exactly when it was.

Mr. CHERTOFF. Well, page 50, line 8, and just to put it in context, Mr. Lindsey was in to take a deposition and was asked about this very meeting on November 21, 1995. Now let's go to the deposition that you gave, line 8:

Question: A second conversation with Mr. Lindsey?

Answer: Yes. I want to say it was around Thanksgiving, either before Thanksgiving or after, I'm not real sure, this past Thanksgiving.

Question: Oh, 1995?

Answer: Yes.

Question: What did Mr. Lindsey say to you?

Answer: He had just asked me did I remember him asking me about a meeting that the Governor had in a trailer with me and McDougal, and I said yeah, I do remember that.

Does that refresh your memory that you had a second conversation with Mr. Lindsey?

Mr. NASH. Yes, sir.

Mr. CHERTOFF. This was just this last Thanksgiving; right?

Mr. NASH. This past Thanksgiving.

Mr. CHERTOFF. Did Mr. Lindsey tell you that he had been asked about this meeting in the Grand Jury?

Mr. NASH. No.

Mr. CHERTOFF. Did you find it curious that this was the second time Mr. Lindsey had called you to ask about this meeting at the trailer at 145th Street with Governor Clinton and Mr. McDougal?

Mr. NASH. No, I did not find it curious.

Mr. CHERTOFF. You frequently get inquiries like this from Mr. Lindsey?

Mr. NASH. Well, when you have these kinds of things going on, I assumed it related to all of this, but I didn't ask any questions about it. I answered his question.

Mr. CHERTOFF. From either time you had a conversation with Mr. Lindsey in 1993 or 1995 about this meeting that occurred at McDougal's trailer, did he ever tell you how he knew you had been present at a meeting with Governor Clinton and Mr. McDougal?

Mr. NASH. No.

Mr. CHERTOFF. I mean, it wasn't something you had volunteered? He called you; you didn't call him to say by the way, I was at a meeting with McDougal and the Governor back in the 1980's?

Mr. NASH. No, I did not call him.

Mr. CHERTOFF. Mr. Lindsey reached out for you?

Mr. NASH. He asked me was I at a meeting in a trailer with Mr. McDougal and Governor Clinton.

Mr. CHERTOFF. I'm sorry, I know my time is up. I want to put up one last item to ask you to close this off. It's a piece of paper

obtained from Mr. Lindsey, part of his notes. Midway down the page it says, "Spoke with Bob Nash. He was with BC when he went to trailer on 145th Street." Do you remember saying this—I think we'll give you a copy right now.

The CHAIRMAN. Excuse me just for a moment. The Ranking Member is insisting upon strict adherence to the time provisions. I think that for an orderly meeting, we should permit Counsel to conclude those areas that they are working on with witnesses, provided that the time does not extend extraordinarily. However, the Ranking Member insists upon this being carried out, and I will adhere to that. So we will suspend at this point and we will come back to this.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you, Mr. Chairman.

I do insist upon it. It's exactly what the Resolution provided. Yesterday on occasions you went 10, 15, 20 minutes beyond the time provided in the Resolution for questioning. I just think it makes for a more orderly hearing if we stick to what the Resolution provided and then we don't have to have a back and forth about whether time is being unreasonably exceeded and so forth. We'll stop when we get the red light and I think the other side should stop when it gets the red light.

The CHAIRMAN. The Senator wants adherence to the Resolution, and I will make the observation that to break the flow of witnesses, I do not believe is in the best interest of the Committee. We have permitted this, obviously, with the indulgence of Members whose times we might be intruding upon, so as to attempt to get a full picture and attempt to move the proceeding, because we will come back to this, but it will just take more time to develop it.

The Senator is absolutely within his right. But I tell you this, understand that this goes two ways and we'll do it just by the book. I do not believe it's in the best interest of the Committee to operate in that fashion, but the Senator has his right to insist upon it, and that's what we will do.

Senator SARBANES. Well, what has happened is the process has slipped so badly that in my view it's being abused because the time has been extended and extended and extended. There are no limits on the number of rounds Members can come back. I understand that point.

The CHAIRMAN. This is on your time, Senator. If you want to do a filibuster, go ahead.

Senator MURKOWSKI. Point of inquiry, Mr. Chairman, relative to the time. It is 30 minutes for each side?

The CHAIRMAN. Thirty minutes and then 10 minutes.

Senator MURKOWSKI. And then 10 minutes, and then there will be additional rounds if necessary.

The CHAIRMAN. Certainly.

Senator MURKOWSKI. Well, do all the Members get to question 10 minutes before it goes back to the 30 minutes?

Senator SARBANES. It doesn't go back to the 30 minutes.

Senator MURKOWSKI. Thirty minutes is over?

The CHAIRMAN. Yes.

Senator SARBANES. The Resolution is very clear on this point. There's an initial 30 minutes on each side and then it goes 10 minutes on each side from then on. Now what's been happening is that those time limits have been in a sense virtually ignored so there's no form consistent with the provision in the Resolution with respect to the time. And it seems to me rather than hassle about it back and forth, we simply ought to follow what we laid down at the beginning on how we were going to alternate time.

Senator MURKOWSKI. Well, my question is still unanswered relative to second rounds. Does it go back to the—

The CHAIRMAN. Ten minutes.

Senator MURKOWSKI. So everybody has 10 minutes after the first 30 minutes, including the Chairman and Ranking Member from then on? Because I have sat here from day to day and felt frustrated, but it seems to me it's been equal in allowing both sides to go over so I am not complaining, I just wanted to understand the rule. I understand the rule and I thank the Chairman.

The CHAIRMAN. Yesterday, I think it would be fair to say that when the Minority had its points to make they went well over the time on a number of occasions, and the Chair permitted that because I think Members should be given an opportunity to make their views and to complete the questioning if it's not going to be an extraordinarily long period of time.

I think that the Committee works better in extending that kind of courtesy to the Members. However, the Ranking Member is well within his right to insisting to that limitation and that's the way we will operate.

So Senator, it is yours to examine.

Senator SARBANES. Well, let me just make this final point, Mr. Chairman. A number of Members have been inconvenienced and upset on occasions in the past because we haven't stuck to the time, I mean, even Senator Murkowski yesterday himself, on your side, but a number of my Members in the past have found themselves waiting and waiting and waiting well beyond the time period provided in the Resolution. So I think it would make for a more orderly functioning of the Committee if we didn't have this problem. I yield to Mr. Ben-Veniste. We'll stop when the clock goes red.

Mr. BEN-VENISTE. It's 3 minutes of 11.

The CHAIRMAN. Mr. Ben-Veniste, the clock has been on and I don't need you to attempt to be a timekeeper and you are not running the Committee. You may think you are, but you're not.

Mr. BEN-VENISTE. No, I'm not.

The CHAIRMAN. Now it's on your time and the clock is running.

Mr. BEN-VENISTE. I simply noted what time it is, Mr. Chairman.

The CHAIRMAN. And I would simply note that this discussion has been on your time, and I said that right from the beginning.

Mr. BEN-VENISTE. Mr. Fitzhugh, this is not the first time that you have talked about the matters you have gone into this morning under oath, is it?

Mr. FITZHUGH. No, sir.

Mr. BEN-VENISTE. In fact, this is kind of a déjà vu of your testimony which you gave 6 years ago; isn't that so?

Mr. FITZHUGH. Yes, that's correct.

Mr. BEN-VENISTE. The testimony that I am alluding to was given by you on May 31, 1990, in Little Rock, Arkansas, in the trial styled *United States of America versus David Henley, Jim Henley, and James McDougal*; is that correct, sir?

Mr. FITZHUGH. Yes, this subject came up at that trial.

Mr. BEN-VENISTE. You were a witness at that trial and you testified fully and truthfully to the best of your ability at that time?

Mr. FITZHUGH. Yes, sir.

Mr. BEN-VENISTE. And of course we have the benefit of that trial transcript, and we have the benefit of testimony you gave 2 years ago, or rather, an interview that you gave 2 years ago in 1994, before the RTC. You're familiar with the fact or you recall the fact that you were interviewed extensively at that time by the RTC?

Mr. FITZHUGH. I've talked to several groups of people on several occasions and no doubt that's one of them.

Mr. BEN-VENISTE. Now there isn't anything new that you testified to this morning that you hadn't gone over or provided earlier?

Mr. FITZHUGH. No, sir.

Mr. BEN-VENISTE. Indeed, have you had the occasion to review the report issued to the RTC by the law firm of Pillsbury Madison & Sutro, your statements and testimony are referred to at pages 12 and 13 of the Pillsbury Report. I don't know whether you've had occasion to review that report, sir.

Mr. FITZHUGH. I have not.

Mr. BEN-VENISTE. You are, are you not, an attorney licensed to practice in Arkansas?

Mr. FITZHUGH. Yes, that's correct.

Mr. BEN-VENISTE. Let me go over some of the things that I think are relevant to your involvement with Madison. First, it is correct, is it not, that you discussed back in 1985 questions relating to the issuance of preferred stock by Madison in order to raise capital for Madison with employees of the Arkansas Securities Department?

Mr. FITZHUGH. Yes, that's correct, I did.

Mr. BEN-VENISTE. And indeed, we have and you have had the opportunity to review, I take it, and have before you notes reflecting Mr. Henley's conversation with you, as well as your memorandum to Mr. Latham, dated April 16, 1985?

Mr. FITZHUGH. I saw that a couple of weeks ago, but I really haven't reviewed it, but I know it's out there.

Mr. BEN-VENISTE. You know that it's out there, and presumably that helps your recollection to some extent. I know it's 11 years ago and it's difficult to remember these things and we'll get to 11 years ago with you in a moment, Mr. Nash, but is it fair to say that at some point prior to the time that the Rose Law Firm was engaged by Madison, that you had occasion to discuss issues relating to the issuance of preferred stock with employees of the Arkansas Securities Department?

Mr. FITZHUGH. I really don't know about the timing, as far as who I talked to first and when, but that's certainly possible.

Mr. BEN-VENISTE. Do you accept that the references to your conversations reflected in the memoranda contemporaneously prepared by the individuals with whom you spoke, including your own memorandum, are accurate and were not backdated?

Mr. FITZHUGH. They were not backdated.

Mr. BEN-VENISTE. So accepting that these discussions occurred between you and representatives, I take it that it was Mr. Henley at the Arkansas Securities Department, you were making inquiries as an attorney, inside attorney, for Madison Savings & Loan at that time?

Mr. FITZHUGH. I don't know that I was making them as an attorney. I would have made the same inquiries if I was an attorney or if I wasn't. It was just a job duty that was assigned to me to do.

Mr. BEN-VENISTE. But you were an attorney and you were talking about essentially legal questions about the permissible activities of a savings and loan chartered by the State of Arkansas?

Mr. FITZHUGH. Yes, I think it concerned some Arkansas statute, that's correct.

Mr. BEN-VENISTE. It didn't hurt matters the fact that you were trained as an attorney?

Mr. FITZHUGH. No, sir.

Mr. BEN-VENISTE. That brings to mind the deed that you had identified earlier, transferring property from the Wards back to the savings and loan and from the savings and loan to you. Indeed, you prepared those documents yourself, if I understand your testimony? These are the warranty deeds.

Mr. FITZHUGH. I believe I prepared one of them.

Mr. BEN-VENISTE. The other deed was prepared according to the legend appearing on it by John Latham, and John Latham was the President of Madison Savings & Loan at that time?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. So one was prepared by you and the other was prepared by Latham, but the point I think that is important to make is that they were not prepared by outside lawyers and specifically they were not prepared by anyone at the Rose Law Firm; is that correct?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. Now, you regarded Castle Grande as sort of an entity or description within the IDC property; is that correct?

Mr. FITZHUGH. Yes, that's correct.

Mr. BEN-VENISTE. When for the first time was any residential unit located on that property in accordance with the development scheme?

Mr. FITZHUGH. To my knowledge, there was not any residential unit on that property at all until after Madison purchased it.

Mr. BEN-VENISTE. Right. I have no reason to believe otherwise, but after that, how long a time elapsed until these wide trailers began rolling onto the property?

Mr. FITZHUGH. I don't really know because I was not involved in the Castle Grande project per se, but if I had to guess, I would probably say 3, maybe 4 months, something like that.

Mr. BEN-VENISTE. Was there a point in time when funds began to be expended in any amount, significant amount to advertise this project, do you recall?

Mr. FITZHUGH. Castle Grande was advertised, I know that.

Mr. BEN-VENISTE. About when did that start?

Mr. FITZHUGH. I really don't know.

Mr. BEN-VENISTE. Was there a big billboard up there? What sort of advertising was there?

Mr. FITZHUGH. I believe Madison did purchase a billboard that you could see on Highway 67/167 and probably some other print or media, something like that.

Mr. BEN-VENISTE. Well, do you remember, for example, whether there was any big television campaign?

Mr. FITZHUGH. I only remember the Maple Creek Farms. There probably was a Castle Grande.

Mr. BEN-VENISTE. Maple Creek Farms was an earlier project?

Mr. FITZHUGH. Yes, that's correct.

Mr. BEN-VENISTE. That project involved some sort of sensational or certainly talked-about advertising involving Mrs. McDougal as a participant in the advertising; is that correct?

Mr. FITZHUGH. Yes.

Mr. BEN-VENISTE. She was riding a horse and sort of nontraditional rodeo garb, I guess?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. And did that caused some discussion around in Little Rock?

Mr. FITZHUGH. Yes, I believe it did.

Mr. BEN-VENISTE. Castle Grande was nothing like that, was it?

Mr. FITZHUGH. No, sir.

Mr. BEN-VENISTE. So there was a billboard out there and maybe some print?

Mr. FITZHUGH. I believe that's correct.

Mr. BEN-VENISTE. OK. Do you happen to know what the whole advertising budget was for Castle Grande?

Mr. FITZHUGH. I have absolutely no idea.

Mr. BEN-VENISTE. It wasn't the sort of thing that people talked about at cocktail parties in Little Rock, oh, Castle Grande, that's hot, the advertising is interesting or——

Mr. FITZHUGH. No.

Mr. BEN-VENISTE. And in connection with the subsequent transactions, were you aware of subsequent transactions relating to purchases and sales of the Castle Grande property?

Mr. FITZHUGH. When you say, "Castle Grande," are you referring to the what I call the IDC, the entire tract of land?

Mr. BEN-VENISTE. Well, I understand that it was known as IDC in terms of the entire tract of land. Let's talk about it as an entire entity. Yesterday, we heard testimony about various land flips and the inflated prices involving properties controlled either by the McDougals or Madison Guaranty Savings & Loan. Were you familiar with those transactions?

Mr. FITZHUGH. Well, I do know that Madison sold certainly other properties besides the Levi Strauss building that I purchased, so I do know that there were some other sales to other parties.

Mr. BEN-VENISTE. You were a vice president of the savings and loan at that time?

Mr. FITZHUGH. At one point in time I was the vice president of the MFC, the financial corporation, and I think at another point in time I was a vice president of the savings and loan, and I don't know which was which or when so——

Mr. BEN-VENISTE. But during the years 1985, 1986, 1987, you were involved in the management of Mr. McDougal's savings and loan/financial services company?

Mr. FITZHUGH. I think it would be a stretch to say I was involved in the management of it.

Mr. BEN-VENISTE. You were there?

Mr. FITZHUGH. I was there.

Mr. BEN-VENISTE. On a day-to-day basis?

Mr. FITZHUGH. Yes.

Mr. BEN-VENISTE. Were you aware that there were fraudulent transactions taking place with respect to inflated prices and insider dealings?

Mr. FITZHUGH. No, sir.

Mr. BEN-VENISTE. You were there on a day-to-day basis?

Mr. FITZHUGH. Yes, sir.

Mr. BEN-VENISTE. And you're an attorney?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. Now let me go back to the question of the Rose Law Firm. Were you aware that the Rose Law Firm or any of its partners or its associates were involved in any of the transactions involving these land flips or inflated prices, insider trades?

Mr. FITZHUGH. I do not recall any involvement with the Rose Law Firm that I had anything to do with on IDC or Castle Grande.

Mr. BEN-VENISTE. Or any other matter, as far as you know?

Mr. FITZHUGH. The only thing I had anything to do with the Rose Law Firm concerned broker-dealer matters.

Mr. BEN-VENISTE. The broker-dealer matter that we began talking about where you made the inquiry to Mr. Handley at the Arkansas Department of Securities?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. Who did you have dealings with at the Rose Law Firm?

Mr. FITZHUGH. Rick Massey.

Mr. BEN-VENISTE. As far as you know, did anyone other than Mr. Massey handle that matter on a day-to-day basis?

Mr. FITZHUGH. Not that I'm aware of.

Mr. BEN-VENISTE. Did you have contact with anyone other than Rick Massey?

Mr. FITZHUGH. Not that I recall.

Mr. BEN-VENISTE. You testified that you learned shortly after you became employed by Madison that Mr. McDougal had some relationship with Mr. Clinton.

Mr. FITZHUGH. Yes.

Mr. BEN-VENISTE. It's well-known that, indeed, Mr. Clinton and Mr. McDougal had had a relationship in politics and we are most aware of the fact that they had a relationship in connection with the Whitewater Development. Did you know or did you observe whether Mr. McDougal was a person who liked to boast, who was boastful about his relationships?

Mr. FITZHUGH. I don't believe he was excessive in that regard, but perhaps to some extent.

Mr. BEN-VENISTE. Let me turn to you for a moment, Mr. Nash. In connection with the visit to Mr. McDougal's trailer, if I understand correctly, you were unsure of what year that was?

Mr. NASH. That is correct.

Mr. BEN-VENISTE. We have heard some testimony about another property controlled by Mr. McDougal prior to the time that they

purchased the IDC property. Do you know what development that was that Mr. McDougal was involved in and about which Mrs. McDougal had some role in promoting the development?

Mr. NASH. I remember something called Maple Creek Farms being advertised on television.

Mr. BEN-VENISTE. Maple Creek Farms, do you recall what general area that was located in?

Mr. NASH. It was southeast of Little Rock.

Mr. BEN-VENISTE. Was it far from the area that we are referring to here, at 145th Street?

Mr. NASH. I'm not sure I know which area you're referring to.

Mr. BEN-VENISTE. The area that has been referred to by Mr. Chertoff in his questioning that encompassed the IDC property.

Mr. NASH. I don't have any idea how far they are apart or how close they are.

Mr. BEN-VENISTE. We'll come back to that in a second. The issue of the Levi's factory in Arkansas was a matter of discussion, I take it, at your level with the Governor from time to time, what Levi was doing as an employer in the State?

Mr. NASH. I'm sorry, one more time, the question.

Mr. BEN-VENISTE. Let me break this down. There was some confusion and I think to a large measure you cleared that up. There was a suggestion that there was a factory on this property controlled by Madison and Ward. Was the factory that you were talking about, the Levi's factory, on this property or was it in some other place nearby?

Mr. NASH. What I know is there was a Levi Strauss manufacturing plant in an industrial park south or southeast of Little Rock, and it is a Levi Strauss plant. And that is in the general vicinity, I don't know how close it was to this meeting or visit at the trailer.

Mr. BEN-VENISTE. OK. Mr. Fitzhugh, maybe you can help us out, since you were more involved in the IDC tract, and clear up this question. Was the Levi Strauss factory that Mr. Nash is talking about located on this IDC property?

Mr. FITZHUGH. No, no.

Mr. BEN-VENISTE. That's quite clearly different than the warehouse that you have been talking about?

Mr. FITZHUGH. Two totally different structures, completely non-related and noncontiguous.

Mr. BEN-VENISTE. Thank you.

Senator SARBANES. Where was the factory?

Mr. FITZHUGH. The factory is visible from the 67/167 highway as you drive from Little Rock to Pine Bluff. It would be on your left, and it is a much larger building. And this, what you have marked as number 1 is at least a mile off the road, you could not possibly see it from the 67/167 highway, and it's purely a warehouse, no manufacturing facilities whatsoever.

Senator SARBANES. That's just a warehouse?

Mr. FITZHUGH. Correct.

Senator SARBANES. OK.

Mr. BEN-VENISTE. Now much has been made, Mr. Nash, and I'm still trying to figure out the connection, about the conversation that you were present at where Mr. Clinton, then-Governor Clinton, dropped in on Mr. McDougal at this trailer somewhere in this gen-

eral area, whether it was Maple Creek Farms or it was on the IDC property, I take it you have no ability to tell us right now.

Mr. NASH. No, sir, I do not.

Mr. BEN-VENISTE. In terms of the subject—how long did the visit last?

Mr. NASH. My best recollection is that it was in the neighborhood of 5 to 10 minutes, but I can't be sure.

Mr. BEN-VENISTE. Now tell us if you will what your job was in the State of Arkansas during this period of time?

Mr. NASH. My job was to provide advice and counsel on the development of economic development programs to make Arkansas a better place to live and work.

Mr. BEN-VENISTE. When did you start?

Mr. NASH. I started to work for the Governor in 1983. I believe it was January or February of 1983.

Mr. BEN-VENISTE. Did you work continuously until the time that you left?

Mr. NASH. I worked there from 1982 until sometime in 1989.

Mr. BEN-VENISTE. During that period from 1985 through 1987, let's say, right in the middle of this time period of your service for the State, tell us what the nature of your relationship was with the Governor?

Mr. NASH. 1985 to 1987. In 1985, there was a legislative session where a large number of economic development programs and policies were passed and were in the process of being implemented. And I spent a lot of time with the Governor as we were traveling around the State discussing these programs and educating the public and the business community and community groups about these programs.

Mr. BEN-VENISTE. So you traveled with the Governor frequently and met with him frequently during this period?

Mr. NASH. Yes, sir, I did.

Mr. BEN-VENISTE. Let me ask you whether there was any other occasion that you can recall when the Governor met with Mr. McDougal?

Mr. NASH. No, I do not recall another occasion where Governor Clinton met with Mr. McDougal.

Mr. BEN-VENISTE. Let's now focus on this one visit. Your testimony is it took 5 to 10 minutes. You were present the whole time in the trailer with Mr. McDougal and Governor Clinton?

Mr. NASH. Yes, sir, I was present the whole time.

Mr. BEN-VENISTE. Did Mr. McDougal ask Mr. Clinton to do anything during that period of time?

Mr. NASH. No, I do not recall him asking him to do anything.

Mr. BEN-VENISTE. Did Governor Clinton ask Mr. McDougal to do anything?

Mr. NASH. No, I do not recall him asking him, Mr. McDougal, to do anything.

Mr. BEN-VENISTE. Did they do any business? Was there any deal discussed?

Mr. NASH. No, it was pleasantries.

Mr. BEN-VENISTE. If I understand your testimony, you were on your way from one place that passed by where Mr. McDougal's

trailer was in general terms on your way back to Little Rock; is that correct?

Mr. NASH. Yes. As I remember it, we were—I don't know exactly where, but it seems like his trailer was between where the event we attended was and the State capitol.

Mr. BEN-VENISTE. Well, what do you remember about how you got to the trailer? Did Governor Clinton give explicit instructions on where to find this trailer, as you recall?

Mr. NASH. No, he did not. As I remember it, we were looking for the trailer trying to figure out where it was, and we drove around for a few minutes trying to find it. I remember that.

Mr. BEN-VENISTE. So there was no indication given to you that Governor Clinton had been there before or had ever visited Mr. McDougal there before?

Mr. NASH. I had no indication that he had visited Mr. McDougal there before.

Mr. BEN-VENISTE. To the best of your knowledge, did anything untoward take place during that 5- or 10-minute conversation in the trailer with Mr. McDougal?

Mr. NASH. No.

Mr. BEN-VENISTE. I see the orange light is on, and I'll cede back the remaining minute or two.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Nash, so I gather that, in fact, there was a little bit of difficulty in getting to this particular trailer, it wasn't just that you're driving down the road back from something and all of a sudden, the trailer is right there and somebody says, oh, let's stop at the trailer. Rather what happened is there was a specific decision to go and meet Mr. McDougal or try to find Mr. McDougal at the trailer; right?

Mr. NASH. That is correct. As I remember it, the trailer is not visible from the highway, which I believe is—I forget the number but it is not visible from the highway.

Mr. CHERTOFF. So you would have looked for it?

Mr. NASH. Yes, sir.

Mr. CHERTOFF. I want to ask you, Mr. Fitzhugh, you mentioned this Levi Strauss factory. Where is that in relation to your building, the Levi Strauss warehouse?

Mr. FITZHUGH. It's not anywhere close. I mean, it's in the same general vicinity. It's on the same major highway there, but you can't see one building from the other, and it takes 4 or 5 minutes to drive from one to the other.

Mr. CHERTOFF. Now did Mr. McDougal have any interest or did Madison or any other one of Mr. McDougal's businesses, to your knowledge, have any business relationship or ownership interest in the Levi Strauss factory?

Mr. FITZHUGH. Absolutely none that I'm aware of.

Mr. CHERTOFF. But you are aware because you, in fact, were involved in the transaction that Mr. McDougal did have an interest of some kind, whether it be originally ownership or whether it be through the loan and the nonrecourse note, with the Levi Strauss warehouse; right?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. And in fact, it was part of the understanding that you had when you warehoused this piece of property that he was ultimately going to try to get this thing sold so he might make some money off of it; right?

Mr. FITZHUGH. Well, I think the long-range picture ties back in with this broker-dealer, that that was one of the things I was hired to do was set up a broker-dealer at Madison. They were going to offer shares in various real estate projects and the Levi Strauss building was going to be one of the projects that was put into a limited partnership and sold. It never took place.

Mr. CHERTOFF. So that was a building, that Levi Strauss building was something Mr. McDougal did have an interest in seeing sold at some point; right?

Mr. FITZHUGH. Yes.

Mr. CHERTOFF. Mr. Nash, I want to get back to the question about how blue jeans comes up here, because I want to be quite sure. Your testimony here is that now you recall blue jeans comes up in this meeting that you drove to at this trailer you tried to find, that this comes up because there was a comment on the Levi's jeans that Mr. McDougal was wearing?

Mr. NASH. That is what I remember, sir.

Mr. CHERTOFF. Well, we can go back to the deposition of a month ago, page 34, line 18:

Question: And then what happened, what occurred during this meeting?

Answer: As I remember it, pleasantries were exchanged and I remember a discussion about blue jeans, blue jeans, because there was a blue jean factory close, Levi Strauss has a blue jean factory out there, and in some sort of way that subject came up. That's about the only thing specific I can remember.

Question: What do you recall about this blue jean factory? Anything more? Was McDougal interested in investing in the blue jean factory?

Answer: I don't know.

So it seems like in your deposition here you associated this issue of blue jeans coming up not because of what someone was wearing but because of the fact that there was a discussion of a blue jeans factory. Is that what—fair to say in your deposition?

Mr. NASH. That is not fair. I think later on—

Mr. CHERTOFF. The deposition is wrong?

Mr. NASH. Later on in the deposition I said the comment was about blue jeans and not a blue jeans factory.

Mr. CHERTOFF. I understand there was a comment about blue jeans. Do you dispute that in your answer in the deposition, you said, "I remember a discussion about blue jeans, because there was a blue jean factory close, Levi Strauss has a blue jean factory out there, and in some sort of way that subject came up." Is that the answer you gave?

Mr. NASH. That is one of the answers. But in the later answer I indicated that the subject was about blue jeans and not a blue jeans factory.

Mr. CHERTOFF. And it wasn't until today that you remembered or told us that the subject came up simply because someone was commenting on the pair of jeans that Mr. McDougal was wearing?

Mr. NASH. No, sir, I thought about it a lot after the deposition. When you leave a deposition you think about it.

Mr. CHERTOFF. You thought about it a lot?

Mr. NASH. Yes.

Mr. CHERTOFF. Who did you speak to other than your attorney about the deposition after you left the deposition?

Mr. NASH. I reported to Jane Sherburne that—before I went that I was going to the deposition, and I think that's it.

Mr. CHERTOFF. I beg your pardon?

Mr. NASH. I think that's it. I chose not to discuss it.

Mr. CHERTOFF. You reported to her in what way?

Mr. NASH. That I just went to the deposition—that I was going to the deposition.

Mr. CHERTOFF. Then after you came out of the deposition you discussed it with no one but your own attorney?

Mr. NASH. My own attorney and my wife, I indicated to her that I went to the deposition.

Mr. CHERTOFF. And did you talk to Jane Sherburne again afterwards?

Mr. NASH. No, other than saying I did a deposition.

Mr. CHERTOFF. After you came out, you told her what?

Mr. NASH. That I went to the deposition.

Mr. CHERTOFF. Did you tell her what the subject was?

Mr. NASH. No.

Mr. CHERTOFF. Did she ask you?

Mr. NASH. No.

Mr. CHERTOFF. What about Mr. Lindsey who had made the two calls, one to you in 1993 and one to you at Thanksgiving of 1995, did you call him back and tell him about the deposition?

Mr. NASH. No.

Mr. CHERTOFF. In your thinking about this deposition, about this meeting and this encounter, did you wonder to yourself why Mr. Lindsey would have made two calls to you about this meeting, one in 1993 and one after his own deposition in 1995?

Mr. NASH. I would have assumed it was about all of this that's going on here today.

Mr. CHERTOFF. Well, in 1993 none of this was going on. Do you know why he brought it up in 1993?

Mr. NASH. I do not know.

Mr. CHERTOFF. Now, you indicated that you were at one meeting at the trailer with then-Governor Clinton and Mr. McDougal, and the evidence is that Mr. McDougal actually didn't move out to the trailer on 145th Street until February 1986. I want to be clear. During your visit, did Mr. McDougal take you and the Governor on a tour of the property?

Mr. NASH. No.

Mr. CHERTOFF. During your visit, did Mr. McDougal take you and the Governor to lunch?

Mr. NASH. No.

Mr. CHERTOFF. You're positive about that?

Mr. NASH. I'm positive.

Mr. CHERTOFF. Because then we have a second meeting, and this comes from the recorded statement of Sue Strayhorn, which we have from the RTC, at page 47, she describes what appears to be a second meeting at the trailer, and she says:

Bill Clinton, the only other time I remember seeing him was or even talking to him on the telephone, I mean he just—he didn't call a lot—but he was out at the Castle Grande sales office. He dropped in and—as I recall, I think they went up

the street to the little plate lunch place and had lunch, and Jim said something about giving him a tour.

And I assume it was a commercial property because I think at the time there was a steel mill or steel firm was looking to come in and they were looking at the property out there, so I think he might have been interested in the industrial part of it. But that was kind of a nonevent thing too, you know.

Now, we have this other occasion that Ms. Strayhorn remembers out at this trailer, the Castle Grande sales trailer, which involves going to a lunch place and getting a tour and something about a steel mill. You were not at that visit?

Mr. NASH. No, sir.

Mr. CHERTOFF. Your visit is separate from this other visit which we now have to conclude is a second visit; correct?

Mr. NASH. I don't know anything about the second visit. I know about the visit that I had.

Mr. CHERTOFF. But I want to close off any notion that your visit is the same one that she's talking about, because you didn't go to a lunch place and you didn't get a tour of the property?

Mr. NASH. I did not go to a lunch place and I did not get a tour of the property.

Mr. CHERTOFF. So the visit she remembers is a separate second visit, as far as you know?

Mr. NASH. I don't know anything about her visit or her meeting.

Mr. CHERTOFF. Now, I want to ask you, Mr. Fitzhugh, because you were asked just briefly by Mr. Ben-Veniste about whether you were aware of fraudulent transactions and insider deals.

Your transaction was essentially a sham transaction devised to get some property off the books because it was expected that examiners would be coming in and would determine that there was too much investment property being held by Madison Guaranty; isn't that right?

Mr. FITZHUGH. Well, at the time that McDougal first discussed it with me and we were putting the numbers and papers together, I certainly never thought of it as being a sham transaction. I mean, I didn't know if the savings and loan was making money or losing money, and they had an in-house compliance officer, they had an attorney as president of the bank. As far as I knew, what they were doing was perfectly legitimate. I wasn't going to question what McDougal was doing in arranging the affairs of the bank.

Mr. CHERTOFF. You thought it was legitimate that you're going to take a commission, a sales commission as the broker for a piece of property you purchased, turn around and use that as the down-payment, then get a loan on a nonrecourse basis on an appraisal that you have described as being twice what the value of the property was really worth, on a piece of property you had never seen. You thought that was a regular, plain vanilla, just terrific transaction. Is that what you are telling us?

Mr. FITZHUGH. No, that is not what I said. I didn't think that much about the transaction. And I believe the appraisal came up later. I didn't think it was my place to question McDougal and the others, when there's a whole bunch of other people, a loan committee, compliance officer, that's their job.

Mr. CHERTOFF. You knew this smelled, didn't you?

Mr. FITZHUGH. Well, I thought this is their transaction and if they want to put it together that way, that's their business. I didn't think it up.

Mr. CHERTOFF. So when you say you didn't know about other insider deals and stuff, can we assume that you took the same attitude to other things going on at the savings and loan that you took to this transaction you personally were involved in, namely, it was their business, you didn't want to know about it?

Mr. FITZHUGH. No, because there weren't that many things that I would have any reason to question or wonder about.

Mr. CHERTOFF. We will come back to that the next round.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Nash, you don't know anything about this other second meeting that Mr. Chertoff has been asking about, I take it?

Mr. NASH. No, sir, I do not.

Senator SARBANES. The only meeting you know about is the one, the 5- or 10-minute meeting that involved you and Mr. McDougal and the Governor?

Mr. NASH. Yes, sir, that is correct.

Senator SARBANES. Involved you and Mr. McDougal and the Governor.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. You don't know it to be a first or second, or any number meeting, I take it?

Mr. NASH. No, sir, I do not.

Mr. BEN-VENISTE. When you arrived at the trailer with the Governor, was Mr. McDougal expecting you?

Mr. NASH. No, sir, I don't think he was because he seemed surprised when I walked in.

Mr. BEN-VENISTE. So basically Mr. Clinton was dropping in on Mr. McDougal, he knew he had a sales office or some kind of office in a trailer somewhere in this area, and he decided he would stop in on him?

Mr. NASH. I assumed he knew that.

Mr. BEN-VENISTE. As far as your recollection is concerned, the conversation was completely unremarkable and innocuous?

Mr. NASH. Yes, it was a typical drop-by as we would normally do when we are out on the road.

Mr. BEN-VENISTE. Quite clearly, Mr. David Hale was not present at the meeting, he was nowhere in the trailer or on the grounds or lurking about?

Mr. NASH. I did not see Mr. Hale at this meeting I attended in the trailer with Governor Clinton and Mr. McDougal.

Mr. BEN-VENISTE. Now, Mr. Fitzhugh, we have had this interesting questioning about the blue jeans and the blue jean plant and whether Mr. McDougal was wearing blue jeans, and so on and so forth, and so there is some relationship between some transaction and Governor Clinton.

Let me ask you directly. Did Governor Clinton have anything to do with the transaction in which you were involved, and about which you testified, to the best of your knowledge?

Mr. FITZHUGH. Absolutely none that I am aware of.

Mr. BEN-VENISTE. At the time that the Rose Firm was engaged to represent Madison Guaranty Savings & Loan in connection with this preferred stock issue, who was the principal outside attorney for the savings and loan?

Mr. FITZHUGH. At Madison?

Mr. BEN-VENISTE. Yes.

Mr. FITZHUGH. I don't really know. I could guess, but I don't know if I would be correct.

Mr. BEN-VENISTE. And, during your time there, prior to or subsequent to the time that the Rose Firm was engaged on the issues that you have talked about, were there other outside firms performing work for Madison?

Mr. FITZHUGH. There were other attorneys that I believe, did some work for Madison, but I don't know in what capacity they were hired and what work they did.

Mr. BEN-VENISTE. Who were the other law firms that you know about?

Mr. FITZHUGH. I believe the Mitchell law firm did some work for the bank.

Mr. BEN-VENISTE. Any others?

Mr. FITZHUGH. As far as law firms—the Arnold, Grobmyer law firm did some work on some of the syndications, at least, I believe that's who it was.

Mr. BEN-VENISTE. Is it correct that the Mitchell firm included now-Governor Tucker as a partner or a named partner of the firm?

Mr. FITZHUGH. At some point in time his name was added, but I don't know when. It could have been then, but I am not sure.

Mr. BEN-VENISTE. Who is Mr. Selig?

Mr. FITZHUGH. Mr. John Selig is one of the—I believe he is a partner of the Mitchell law firm and I believe he did some work for the bank during the period of time I was there.

Mr. BEN-VENISTE. Is it correct that in your interviews before the RTC, at page 6, more than 2 years ago, in 1994, you stated that, "Mr. Selig was kind of the outside counsel for the principal counsel for the bank, the S&L. I think that's what he was, I believe so. I believe that's correct."

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. So, we have the fact that, to the best of your knowledge, the Rose Law Firm was not involved in any of the transactions that Mr. Chertoff has been talking about, and about which we heard so much testimony yesterday, involving the transfers of various properties. We know that from the billing records and the testimony of the partners of the Rose Firm that they were not so involved. We know from the Pillsbury Madison & Sutro Report that the Rose Firm was not so involved.

Do you have any other testimony from any source or evidence from any source that would suggest that there is additional information to be gotten, that the Rose Firm indeed was involved in some ways that the RTC and these other investigative agencies have not been able to uncover?

Mr. FITZHUGH. No, I have no information of that type at all.

Mr. BEN-VENISTE. And if I understand your testimony, it is quite clear that Governor Clinton and Mrs. Clinton and the Rose Firm

had nothing to do with the transaction in which you have testified involving the purchase of this abandoned warehouse?

Mr. FITZHUGH. It wasn't abandoned, but absolutely nothing that I was aware of.

Mr. BEN-VENISTE. Sorry, it was not a Levi Strauss warehouse, was it, at the time?

Mr. FITZHUGH. Yes, it was.

Mr. BEN-VENISTE. It was at the time?

Ms. FITZHUGH. Yes, it was.

Mr. BEN-VENISTE. It was not a manufacturing facility; that facility was elsewhere, a larger facility, obviously?

Mr. FITZHUGH. That's correct.

Senator SARBANES. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Senator Sarbanes.

Mr. Fitzhugh, you are a practicing lawyer, you have a law degree. Have you practiced law?

Mr. FITZHUGH. I have a law degree, that's correct.

Senator BOND. Do you have an MBA?

Mr. FITZHUGH. Yes.

Senator BOND. You worked at a well known, regional CPA firm in Little Rock, did you not?

Mr. FITZHUGH. That's correct.

Senator BOND. You also worked with a large real estate development firm based in New York?

Mr. FITZHUGH. That's correct.

Senator BOND. You went to work for Madison Financial, the service corporation of Madison Guaranty, back in March 1985; is that correct?

Mr. FITZHUGH. Yes, that's correct.

Senator BOND. It was October 1985 that McDougal came to you with this deal, you were going to buy the Levi Strauss building?

Mr. FITZHUGH. That's correct.

Senator BOND. As I understand it, you got a half-million dollar loan, you got a commission that became the downpayment, and it was a nonrecourse loan, so you weren't personally liable?

Mr. FITZHUGH. That's correct.

Senator BOND. That's a heck of a deal, is it not?

Mr. FITZHUGH. If I had made any money off of it, it might have been. Perhaps it had potential, but it didn't do anything for me.

Senator BOND. At some point you concluded that that was a sham transaction, or you were a straw party, did you not?

Mr. FITZHUGH. When I became aware of some of the other aspects of that transaction that I was not aware of in October 1985, then it became—yes, it became aware to me that it was not quite what I thought it was.

Senator BOND. What were the aspects of the transaction that convinced you it was a sham, or that you were a straw party? What parts tipped you off that this was somehow not on the up-and-up?

Mr. FITZHUGH. The commission that was paid to me, I, in turn, immediately gave it to the bank so I didn't make a nickel off that.

Senator BOND. You had to pay tax on it?

Mr. FITZHUGH. Yes, I did, so I was actually in the hole. But I later became aware that, when that property was sold, two other people were paid 10 percent commissions or at least—I can't say that is true. That is what I understand is true. So on one transaction, there was \$150,000 of commissions paid, which is certainly exorbitant.

Senator BOND. What about the appraisals? Did you learn that the appraisals had a wonderful way of going up on that property?

Mr. FITZHUGH. I am not aware of more than one appraisal. When you say "going up," that means there is more than one——

Senator BOND. What appraisal was given on that property?

Mr. FITZHUGH. The only one I ever saw was the one we talked about earlier that was like a million or a million one or two, something like that. That's the only one I am aware of.

Senator BOND. Mr. Betts made that appraisal?

Mr. FITZHUGH. That's correct.

Senator BOND. You had just bought the property for a half million dollars so that was a heck of a deal, was it not?

Mr. FITZHUGH. Had it been worth a million two, that would have been a heck of a deal.

Senator BOND. It seemed like it was going to be a heck of a deal, but there came a time when they came to you and said you have to sign a recourse loan?

Mr. FITZHUGH. That's correct.

Senator BOND. And you did that. What caused them to tell you that you had to sign a recourse loan?

Mr. FITZHUGH. It is my understanding that the bank examiners were coming and they would not look favorably upon a nonrecourse note. And it would be reclassified on the books of the savings and loan from one area to another that would, you know, be to the detriment of the savings and loan.

Senator BOND. In fact, with your legal and your real estate background, your work for a CPA, had the examiners known it was a nonrecourse loan, they should have classified it, should they not?

Mr. FITZHUGH. I don't really know that much about bank examining, but I can see why they might. Because the bank had some exposure there if I turned the property in, which I certainly had the option to do at any point I wanted.

Senator BOND. Interesting to me is how did they know the bank examiners were coming? Is that Arkansas practice, that the bank examiners or the savings and loan examiners, say, give a little tip-off that—get the books in order?

Mr. FITZHUGH. It was rumored for months, when I was down there, that the bank examiners are coming Monday. Then they wouldn't come and 2 weeks later the bank examiners are coming Monday, and they didn't come. I was not involved in any part of the bank that had anything to do with bank examiners, but it was just kind of a constant rumor, that they were coming.

Senator BOND. When did you sign the recourse loan?

Mr. FITZHUGH. I'm not entirely sure. I don't really remember.

Senator BOND. That was, in fact, near the time when the bank examiners did come?

Mr. FITZHUGH. Oh, I am sure it was. It could have been a week before, it could have been a month before, but it was certainly before that.

Senator BOND. But they knew at some point they had had this nonrecourse loan—how long did you have the nonrecourse loan?

Mr. FITZHUGH. I don't know. I mean, I know when I signed it—

Senator BOND. Was it 6 months? Was it October 1985 you signed it? Or maybe February, when you had to sign the recourse loan?

Mr. FITZHUGH. I don't know, but that's possible.

Senator BOND. Did you know anything else about the other activities at Madison or at Madison Financial? There was a weekend around February 28th when major activities were underway to clean up the books. Were you involved in any other preparations for the arrival of the bank examiners other than signing the recourse note?

Mr. FITZHUGH. No, I was not.

Senator BOND. With your experience, you saw by, I believe it was August 1987, that this was not on the up-and-up. What did you do and who did you talk to about it in August 1987?

Mr. FITZHUGH. I don't believe it was in August 1987, because I wasn't even working there any longer.

Senator BOND. When did you deed back the property to Madison?

Mr. FITZHUGH. I am not sure. I mean, it is a public record. I just don't happen to know that date.

Senator BOND. OK. When did you leave Madison?

Mr. FITZHUGH. I believe it was in July 1987.

Senator BOND. Did you deed the property back then?

Mr. FITZHUGH. I thought I had because I had several discussions with people prior to leaving about things that we had to do to kind of unwind the entire transaction. And I thought it was completed before I left. It is possible that the deeds were signed afterwards.

Senator BOND. With whom did you have those discussions?

Mr. FITZHUGH. Primarily Stephen Cuffman.

Senator BOND. Mr. Cuffman, and by that time you could explain to him that this transaction just didn't look right?

Mr. FITZHUGH. Actually what happened was at some point in time I believe he was chairman of the bank. I knew Steve; and I called him up and said, "Steve, you may or may not know about this but let me tell you what has happened." And I explained it to him. He said, "Oh, my God, no, I did not know about that." And we both knew we had to straighten it out and basically unwind it.

Senator BOND. You deeded it back to Madison Financial?

Mr. FITZHUGH. I believe so.

Senator BOND. Did you pay any money back or was there any consideration given for that deeding back?

Mr. FITZHUGH. No, they didn't pay me and I didn't pay them. No money changed hands.

Senator BOND. So in effect, looking back on it, you were a straw party; is that correct?

Mr. FITZHUGH. That's correct.

Senator BOND. It was a sham transaction?

Mr. FITZHUGH. Well, you keep saying "a sham transaction." At some point I did decide that it looked pretty bad, but when it was originally presented to me, if this thing had actually worked, if we

had been able to syndicate the property, which was the original plan and that goes back to the broker-dealer, if there had been any profits to be made one of the things that Madison did was you got your salary. And if you were in a department or a project that made some money, you shared 10 percent of the profits. So if it had ever been profitable, I stood to make, not a large amount of money, but possibly some.

Senator BOND. You said that you had not seen the building before you purchased it?

Mr. FITZHUGH. That's correct.

Senator BOND. Did you make any inquiry as to how Madison Financial had acquired it?

Mr. FITZHUGH. I knew how they had acquired it.

Senator BOND. How had they acquired it?

Mr. FITZHUGH. By buying the assets of IDC.

Senator BOND. Do you know how much they paid for that property or how much IDC paid for it?

Mr. FITZHUGH. Absolutely no idea what the basis was on that property.

Senator BOND. Do you know what a land flip is?

Mr. FITZHUGH. Yes, I do.

Senator BOND. Would you just describe what a land flip is and how a land flip involving nonrecourse loans can drain money out of a financial institution?

Mr. FITZHUGH. Well, that's kind of a complicated question. But basically a land flip is—

Senator BOND. Tell us what a land flip is.

Mr. FITZHUGH. A sells it to B for \$1, and B sells it to C for \$2, so B has made a profit of \$1. That's a landflip. And C may sell it to D for \$3.

Senator BOND. If all these are done with nonrecourse loans, everybody can walk away with a dollar, but all those dollars ultimately come out of the pocket of the financial institution, or in this instance, out of the savings and loan insurance fund; and then out of the taxpayers' pocket; is that correct?

Mr. FITZHUGH. Ultimately, if people start defaulting, that's right. Whoever is loaned the money so that the last person, when the music stops, buys it, then that lending institution may wind up with the property and no money.

Senator BOND. And they did. Thank you, Mr. Fitzhugh.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Fitzhugh, I want to be clear on one thing about this commission that you received, when you went through this arrangement, actually you didn't keep it, you used it as the downpayment on the property; is that correct?

Mr. FITZHUGH. I never had possession of it other than to sit across the desk from a man who said, here, sign this, I signed it, handed it back to him, and that's the extent of that commission.

Senator SARBANES. OK. You did have to report it, though, as income and pay tax—

Mr. FITZHUGH. Yes, I did report it as income, paid taxes on it.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Fitzhugh, let me go back again to the purchase by Madison Guaranty Savings & Loan of this property, which you have identified as the IDC transaction. At the time this parcel of land was purchased, was it known by any other name other than IDC?

Mr. FITZHUGH. Not that I am aware of, it was the IDC property.

Mr. BEN-VENISTE. This concept of Castle Grande, the idea that a portion of land could be developed for residential use, having extra-wide trailer homes in this area, was something that came later, if I understand your testimony?

Mr. FITZHUGH. That's my understanding, yes, that Castle Grande did not exist at the time the IDC property was purchased.

Mr. BEN-VENISTE. So that nobody could have known the property as Castle Grande prior to or at the time of the closing of the IDC transaction?

Mr. FITZHUGH. That's my understanding.

Mr. BEN-VENISTE. Now it is quite clear in your mind, then, that IDC and Castle Grande are two different entities, or one entity within a second larger entity, subsequently developed, concocted, thought of, and created?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. Let me go again to the issue of the attorneys involved in making these deals. The transaction that you were involved in, that involved a no- or nonrecourse loan, who drew up the papers in connection with the nonrecourse loan?

Mr. FITZHUGH. I did.

Mr. BEN-VENISTE. No outside attorney, and specifically no one from the Rose Firm, and more specifically Mrs. Clinton, was not involved in that transaction?

Mr. FITZHUGH. I drew up all the papers.

Mr. BEN-VENISTE. The idea, the concept of a nonrecourse loan, was this something that you created?

Mr. FITZHUGH. Yes, sir.

Mr. BEN-VENISTE. And was the concept of nonrecourse something new, had you invented that as far as you knew?

Mr. FITZHUGH. No, I think it was rather a common practice. There was no way in the world I was going to buy that building unless I got nonrecourse money.

Mr. BEN-VENISTE. That is really what I was getting to. We tend to focus so narrowly here on these issues. The concept of a nonrecourse loan is something that wasn't new with this transaction. These kinds of loans had been made in thousands of savings and loans throughout the United States?

Mr. FITZHUGH. That's correct. It is not all that unusual.

Mr. BEN-VENISTE. And, indeed, the problem with the nonrecourse loan that occurs, the most serious problem that occurs is when the value of the land to which the lending institution must look for repayment of the loan, if it's a loan based on land, when that land goes down in value, as it did with the crash in real estate in the mid-1980's, then the savings and loan, then the lender is on the hook for the difference?

Mr. FITZHUGH. That's correct. If the person stops making their note payments, then the only asset to back up the note and the mortgage is that piece of property, nothing else.

Mr. BEN-VENISTE. So that, in thousands of savings and loans throughout the United States, these nonrecourse loans secured by real estate or other tangible property which declined in value since the time the loan was made was a substantial part of what became the savings and loan crisis; is that fair to say?

Mr. FITZHUGH. I am sure some portion of that was nonrecourse notes, that's correct.

Mr. BEN-VENISTE. Now in connection with the other transactions about which we have heard testimony involving the flips back and forth and I am not suggesting that anyone who had a nonrecourse loan at a savings and loan or other institution was engaged in some fraudulent transaction. The fraud that has been discussed here and alleged here has to do with inflated values, wrongful appraisals, and insider transactions that made it a sham. Would you accept that?

Mr. FITZHUGH. Yes, that's correct. I mean, the concept of a nonrecourse loan in itself is by no means something that's fraudulent.

Mr. BEN-VENISTE. So that, in connection with the other transactions that were testified to here by the bank examiners who looked at them, and are set forth in much, much greater detail and clarity in the reports that we have received about Madison bank from the RTC and other institutions, indicate that Mr. McDougal was apparently involved in a number of transactions that were highly questionable.

My question to you is whether you have reason to believe that the papers documenting these transactions, such as the papering for your transaction, was prepared by anyone other than the insiders themselves?

Mr. FITZHUGH. No.

Mr. BEN-VENISTE. And, indeed, the improprieties that have been alleged here were, to a large extent, the subject of a criminal trial back in 1990 in which Mr. McDougal was prosecuted and acquitted; is that correct?

Mr. FITZHUGH. Yes. There were several parts of that trial, and this Levi Strauss building was one of those, and he was acquitted.

Mr. BEN-VENISTE. You were asked a question, I believe by the Senator from Alaska, about—I'm sorry, it may have been Senator Bond, I stand corrected—about the procedures in effect in Arkansas for the bank examination.

We are fortunate, Mr. Chairman, that we have something to help us in that regard. It is the interview by Pillsbury Madison & Sutro of Mr. Clark. Mr. Clark was the bank examiner from the Federal Home Loan Bank Board, who provided this information on October 20, 1994, at page 20656651. And I will read from it:

But in the normal course what happens is a request letter for information is sent to the institution. In that letter it would tell them what date we expect to arrive. Normally, that request letter would have been sent out a few weeks, at least, in advance. That was sent out from the Little Rock offices, at least as far as I know, but they would have known we would have been coming to the institution, at least a few weeks ahead of time.

That was James Clark's statement. He was the bank examiner who performed the examination in 1986. Does that help clarify or refresh your recollection about the circumstances under which you knew that the examination was going to take place at or about a specific time?

Mr. FITZHUGH. Yes, I imagine the savings and loan received a letter the nature you are talking about, and let people know that they were coming.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. So you hear the cops are coming, and somebody comes to you and says, hey, listen, you know that nonrecourse note, you have to sign something and make it so that we can show it to some people so that we can show they do have recourse. Did they come to you like that?

Mr. FITZHUGH. More or less like that, yes.

The CHAIRMAN. So you knew—

Mr. FITZHUGH. They just said here, sign it.

The CHAIRMAN. They said here, sign it? You told us in the beginning that you would never sign anything like that. You wouldn't go into an agreement if you didn't know you could get off the hook at anytime and you didn't have any personal responsibilities; isn't that true?

Mr. FITZHUGH. That's correct.

The CHAIRMAN. A guy comes in and says sign it, what did he tell you? He said because the bank examiners are coming.

Mr. FITZHUGH. No, but I think that was common knowledge.

The CHAIRMAN. Then you knew the bank examiners were coming. Did he say just sign it because I want you to sign it, or did he say sign it because the bank examiners are coming?

Mr. FITZHUGH. He just said sign it.

The CHAIRMAN. He said sign it. But you are a lawyer, you are astute, you are in real estate, you do all these things. He just said sign it and you just sign anything. You told us you wouldn't have signed that thing initially. Now they come, and it happens right before this bank's examination, and they say, here, sign this, now you are going to be personally on the hook. Why did you sign it?

Mr. FITZHUGH. Well, because I knew it wouldn't stand up.

The CHAIRMAN. But you knew that it was going to be used, right?

Mr. FITZHUGH. It bothered me, yes. I felt like they were going to do something with it, and, yes, that bothered me a lot.

The CHAIRMAN. That was improper, wasn't it?

Mr. FITZHUGH. It was, for them to present that to me and say sign it, it was improper.

The CHAIRMAN. Why didn't you tell them I'm not going to sign?

Mr. FITZHUGH. I thought about that.

The CHAIRMAN. But you didn't do that?

Mr. FITZHUGH. No, I didn't.

The CHAIRMAN. Why did you take the \$50,000 commission? You didn't do a darn thing to earn that, did you?

Mr. FITZHUGH. I didn't benefit from it, either.

The CHAIRMAN. Did you do anything to earn that commission?

Mr. FITZHUGH. No.

The CHAIRMAN. Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you, Mr. Chairman.

I would like to follow up on that. Speaking about the loan, Mr. Fitzhugh, you received a \$50,000 commission on this transaction.

If we can put up the slide dealing with the acquisition of property by David Fitzhugh, I just want to try to follow some of this money.

You received a \$50,000 commission for a \$500,000 purchase, yet also was a \$475,000 loan. If you add all those together, there is a missing \$25,000. You said you didn't benefit, so in other words, \$25,000 didn't get skimmed off and get put into your account?

Mr. FITZHUGH. No, it did not.

Senator GRAMS. Where did it go?

Mr. FITZHUGH. I think there were some operating expenses, we had to pay insurance and get a bond with the city of Little Rock, and we didn't want to have absolutely no money in that account in case something needed to be done.

Senator GRAMS. Whose account was this? Was it Mr. McDougal's, so did he benefit from this loan as well?

Mr. FITZHUGH. No, it was my account.

Senator GRAMS. So all \$25,000 was gone?

Mr. FITZHUGH. I don't know at the time the note was closed if it was fully funded or not.

Senator GRAMS. But you had a \$25,000 cushion in there to take carry of excessive expenses.

Mr. FITZHUGH. I don't believe I did.

Senator GRAMS. You said you had money in an account that was going to take care of these expenses?

Mr. FITZHUGH. But I don't know how much it was.

Senator GRAMS. Did you ever close out the account?

Mr. FITZHUGH. No.

Senator GRAMS. It is still there?

Mr. FITZHUGH. Well, since that bank is really no longer in existence, I moved that account to another bank, but the account itself is basically still in existence.

Senator GRAMS. So there is still money in this account, under your name?

Mr. FITZHUGH. Well, from other sources.

Senator GRAMS. There is a chance that you did benefit something from this, you did have some money that was circulating that was put into this account?

Mr. FITZHUGH. No, I don't know what the trail of funds was, as far as when the loan was closed and where the money went. But as far as any financial benefit, I never received any.

Now, see, I got the rents from the Levi Strauss building and put that money into that account. I paid the bills and the taxes and everything else.

Senator GRAMS. Today, you can't account for all of that \$25,000?

Mr. FITZHUGH. No. What I am saying is I don't know if I ever got it. I don't know if I got any of it or all of it.

Senator GRAMS. Doesn't that raise some questions? Now, I have been in some land deals where I have purchased properties like this and I have gone into these negotiations, and I have never had somebody put something like this on a plate and shove it in front of me and say, this is a pretty good deal, why don't you sign it. Did it look like a great opportunity to you, or didn't it have some kind of smell to it?

Mr. FITZHUGH. Well, it looked like a possible opportunity, but of course, it's been 11 years and I am sure at the time that I knew

where the money was and what was happening with it. But at this point in time I simply can't remember. But as far as making any money or getting any portion of the \$50,000 commission, I did not.

Senator GRAMS. You were an employee of Madison and you said you were instructed to buy this parcel, Mr. McDougal told you to buy it. Did he explain why he wanted you to buy it? Again because he had to shift some notes or dollars away from Madison, they were overbooked, so to speak, on land and that they needed to move some of this land around, flip-flop, so to speak? Was that the way the instructions came to you?

Mr. FITZHUGH. Well, it was well known at Madison at the time that because of this land purchase, they had more money—or not more money, more assets in the financial corporation than they should. And this Levi Strauss building was only one of many pieces of property that the savings and loan sold off. So I was not singled out to purchase something. It occurred with several other people and several other parcels.

Senator GRAMS. So there were other similar sweet deals, so to speak, that were being passed around on this property?

Mr. FITZHUGH. I don't know how similar they were, but I know there were other sales taking place.

Senator GRAMS. Now, you said you wouldn't have signed a nonrecourse loan, anything, or a recourse loan, but yet—so this is basically a wash, you said you collected rents from Levi, you put it into this so-called account and made the payments to the bank, so there were payments made on this loan at some time?

Mr. FITZHUGH. It was never delinquent.

Senator GRAMS. You changed from a nonrecourse to a recourse loan. As the Chairman said, this note was put to you and you said you had to sign because the bank examiners were coming?

Mr. FITZHUGH. That's right.

Senator GRAMS. Somebody had to say, because you were able to walk away from this in 1987, yet you said an even exchange, you didn't receive any money and Madison didn't receive any money. Was there some guarantee made to you as you were slipped this piece of paper for a recourse loan that said, don't worry about it, we will take care of this, and you will not be liable for anything in the future?

Mr. FITZHUGH. No.

Senator GRAMS. So you gambled that you were going to take this property and that you were not going to be put on the hook for a \$500,000 loan, or the balance?

Mr. FITZHUGH. Well, I don't know that I would call it necessarily a gamble.

Senator GRAMS. But you said you made a call to someone who said we have to unwind this, they didn't realize the complexity of this. It was unwound and you were relieved, Madison took it back?

Mr. FITZHUGH. That's correct.

Senator GRAMS. But somewhere you had to unwind this, somebody must have told you that they would unwind this within a very short period of time?

Mr. FITZHUGH. That's correct.

Senator GRAMS. So that was the deal you made when you signed the recourse loan?

Mr. FITZHUGH. No.

Senator GRAMS. Were you relieved at all when this was all done? Did you walk out of there and say, whew, I am glad this is all over, that's a big loan?

Mr. FITZHUGH. Certainly I was glad to be done with it, yes.

Senator GRAMS. Mr. Nash, I want to ask you a couple of quick questions before my time runs out. Talking about the visit to Mr. McDougal's office at the trailer at Castle Grande, was there any reason that you would want to speak with Mr. McDougal at that time on the trip back from wherever you were at the event with then-Governor Clinton, on the way back to Little Rock? Do you have any reason why you wanted to stop and see Mr. McDougal?

Mr. NASH. I can't think of a reason I would want to stop and see Mr. McDougal.

Senator GRAMS. Did you ever have any kind of a business relationship with Mr. McDougal?

Mr. NASH. No, sir, I did not.

Senator GRAMS. A personal relationship with Mr. McDougal?

Mr. NASH. No, sir, I did not.

Senator GRAMS. A State-type investment relation that the State was investing, or had any kind of relationship under your economic development authority?

Mr. NASH. Not that I am aware of.

Senator GRAMS. So you had no reason to stop, the trooper had no reason to stop, so again we have to assume that the third person in the car is the one who wanted to stop and talk with Mr. McDougal? I mean, rationally we could assume that?

Mr. NASH. Rationally, yes, sir, you could assume that.

Senator GRAMS. Now, you said it was just a visit to say hi and exchange pleasantries. You can remember blue jeans and Levi 501's, but you can't remember anything else about the conversation. And it just happened that there was a Levi's plant on the property, and that the whole conversation was just pleasantries?

Mr. NASH. What I remember is that the conversation was pleasantries. It was short, it was about the weather. We may have asked how his wife was doing. And I noticed in my deposition on page 60, where I do in fact refer to—the question was whether or not it may have been related to a certain type of blue jeans, and I think—I responded positively that it could have been, yes.

Senator GRAMS. You don't remember then-Governor Clinton asking any kind of a business-type question of Mr. McDougal involving any of his investments or any relationship with him?

Mr. NASH. No, sir, I do not.

Senator GRAMS. When Mr. Lindsey called you, either in 1993 or in 1995, was he ever concerned or surprised by your lack of recollection of what happened at the meeting? He didn't question you further to ask you details about the meeting?

Mr. NASH. No, sir, he did not question me.

Senator GRAMS. So, it was a very short conversation with Mr. Lindsey?

Mr. NASH. Yes, sir, probably a few seconds.

Senator GRAMS. One last question. Mr. Fitzhugh, do you still owe any money at all on the loan dealing with this parcel with the Levi asked on it?

Mr. FITZHUGH. No, I haven't since 1987.

Senator GRAMS. So you have nothing?

Mr. FITZHUGH. Nothing.

Senator GRAMS. What about any money in the account? Again, I want to go back to that. You can't say, or you can say, definitely that no money from this transaction remains in that account which you have now moved to another bank?

Mr. FITZHUGH. Absolutely no money remains in that account from this transaction, and I don't believe that loan was ever fully funded.

Senator GRAMS. But you still can't account for the \$25,000 that moved around?

Mr. FITZHUGH. No, I am saying I don't believe it was ever fully funded, which means I never got it.

Senator GRAMS. All right, I have no further questions.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Gentlemen, I want to make sure we are clear on one thing. Senator Grams said it just happened there was a Levi plant on this property. That was a question he put to you, Mr. Nash. Now, my understanding, and we have gone over it more than once this morning, is that the Levi plant was not on this property; is that correct, Mr. Fitzhugh?

Mr. FITZHUGH. The Levi Strauss plant is not what is known as building number one, and was not part of the purchase from IDC.

Senator SARBANES. Right, it was in an entirely different location?

Mr. FITZHUGH. Entirely different location.

Senator SARBANES. What was on the IDC property was a warehouse?

Mr. FITZHUGH. That's correct, a warehouse.

Senator SARBANES. I just wanted to be very clear about that because these questions keep being put as a premise of the question. That's not what the question is about. The question is about something else, but an assumption of the question is that there is a Levi plant on this IDC property. And as I understand it, there is no Levi plant on this IDC property; is that correct?

Mr. FITZHUGH. That's correct.

Senator SARBANES. Is that your understanding, Mr. Nash, or you didn't know one way or the other?

Mr. NASH. I don't know one way or the other.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Fitzhugh, the circumstances under which you signed a recourse note making you personally liable for the loan were not pleasant for you, were they?

Mr. FITZHUGH. No, sir.

Mr. BEN-VENISTE. The notion that you would have changed your obligation from nonrecourse to recourse was not something which you had volunteered to do if you had not been encouraged to do so; is that fair to say?

Mr. FITZHUGH. Absolutely not. There is no incentive to do that and I would not do it.

Mr. BEN-VENISTE. And, indeed, you took that action under what you believed to be some duress?

Mr. FITZHUGH. Yes, exactly.

Mr. BEN-VENISTE. The duress came from an individual associated in some way with the management or board of Madison Guaranty Savings & Loan?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. Is it fair to say that you went into those circumstances in very great detail during the 1990 trial, 6 years ago, of Mr. McDougal and others?

Mr. FITZHUGH. Yes, I did.

Mr. BEN-VENISTE. You were questioned extensively, you were cross-examined, and all of this was laid out in chapter and verse 6 years ago in connection with that trial?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. And essentially, was it your view that if you didn't sign this recourse loan that you would have been terminated from your employment?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. Whether that suggestion was made to you directly or indirectly, that was the sense that you got, that unless this happened you were gone?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. By the same token, when you were strongly encouraged to revise the terms of that transaction, you understood that it was in the context of some bank examiners that were coming in to review the loans at the savings and loan?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. So in all fairness, it is not off the mark to suggest that you recognized that this was fishy at the very least?

Mr. FITZHUGH. Absolutely, and I suppose in retrospect, I could say I should have taken the note and told them where to stick it, but I didn't do that.

Mr. BEN-VENISTE. I understand that. And all of this, again, is information that was provided to the Federal authorities. It was the subject of a prosecution by the U.S. Attorney's Office in Little Rock, Arkansas. You did not hold back in any way, shape or form, as I understand it, at the time you gave that testimony then, nor are you doing so now?

Mr. FITZHUGH. That's correct. I have told the exact same facts as they occurred every single time I have been questioned about this matter.

Senator SARBANES. Thank you, Mr. Chairman.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you very much, Mr. Chairman.

Mr. Fitzhugh, you were associated from 1985 to 1987 with Madison; is that correct?

Mr. FITZHUGH. That's correct.

Senator MURKOWSKI. Could you give us a little detail on what your titles were during that time?

Mr. FITZHUGH. I believe the only title I ever had was vice president.

Senator MURKOWSKI. Vice president of Madison S&L?

Mr. FITZHUGH. Well, I believe it started out as Madison Financial Corporation, and then went to Madison Savings & Loan, and then went back to Madison Financial Corporation.

Senator MURKOWSKI. So you considered yourself, at least during some period of that time, a vice president of Madison S&L?

Mr. FITZHUGH. Only when I was employed or when my paycheck came from the S&L. They switched me around, but my duties and my work never really changed.

Senator MURKOWSKI. If we were looking at the annual report of Madison and we were looking at a list of its officers, the vice president is clearly an officer, would you have been included likely in the list of the officers?

Mr. FITZHUGH. For the savings and loan?

Senator MURKOWSKI. Yes.

Mr. FITZHUGH. I doubt it. It depends upon—see, I don't know what period of time I worked for the savings and loan.

Senator MURKOWSKI. Well, who paid you?

Mr. FITZHUGH. I got a check like everyone else did and—

Senator MURKOWSKI. It was drawn on an account at Madison S&L?

Mr. FITZHUGH. No. For awhile it was drawn on an account at what I call MFC, Madison Financial Corporation, and then for a period of time, it was switched and drawn on Madison Savings & Loan, for what reason I have no idea. But it was—

Senator MURKOWSKI. All right. You are a lawyer and, obviously, you know that the ascension of any officers in a corporation is sanctioned by the board of directors?

Mr. FITZHUGH. Would you repeat that?

Senator MURKOWSKI. You are a lawyer, and as a consequence, you know that any elevation to an officer status, which is what a vice president is, takes an action by the board of directors.

Mr. FITZHUGH. All right.

Senator MURKOWSKI. And you know of no action taken by the board of directors of the S&L or the financial corporation to make you an officer?

Mr. FITZHUGH. When I started working there, I started—

Senator MURKOWSKI. Where?

Mr. FITZHUGH. At Madison Financial Corporation, I was a vice president on the first day I went to work, so I assumed whatever needed to be done, took place before I got there. When they—

Senator MURKOWSKI. Just a minute now. During the time you signed correspondence, would you sign it as a vice president?

Mr. FITZHUGH. Perhaps. I probably would, yes.

Senator MURKOWSKI. You would. Vice president of what?

Mr. FITZHUGH. MFC, when I was working for MFC.

Senator MURKOWSKI. How about when you were working for Madison?

Mr. FITZHUGH. If I was working for the savings and loan, I would probably sign any letters Vice President, Madison Savings & Loan.

Senator MURKOWSKI. OK, now, being a lawyer and being a vice president of Madison Savings & Loan, sometime during that period of time of 1985 to 1987, can you tell us how you had no knowledge of the limitation on the S&L to loan more than 6 percent of its net worth to any one customer?

Mr. FITZHUGH. I did not take part in any loan committee meetings, any loans, and I was never asked my opinion about making any loans.

Senator MURKOWSKI. Well, what did you do, basically, at the institution when you were a vice president?

Mr. FITZHUGH. Well, I did a variety of things. One of the main things I did was work for them to put together a broker-dealer so that, in the event they ever had a product to sell, we would be set up to sell it. And I worked on some real estate projects up and down South Main Street.

Senator MURKOWSKI. You worked on real estate projects. Did you work on any that involved Seth Ward?

Mr. FITZHUGH. Pardon me?

Senator MURKOWSKI. Seth Ward.

Mr. FITZHUGH. Seth Ward bought the IDC but other than that, I didn't have anything to do with—

Senator MURKOWSKI. Other than that?

Mr. FITZHUGH. No.

Senator MURKOWSKI. You were aware of his role?

Mr. FITZHUGH. Only after he purchased IDC.

Senator MURKOWSKI. You weren't aware of it prior to that?

Mr. FITZHUGH. No, sir.

Senator MURKOWSKI. He didn't have any role?

Mr. FITZHUGH. Not that I am aware of.

Senator MURKOWSKI. So that role came up when he purchased the IDC?

Mr. FITZHUGH. As far as I know, yes.

Senator MURKOWSKI. Do you recall the IDC's transitioning into Castle Grande?

Mr. FITZHUGH. No, not exactly.

Senator MURKOWSKI. What do you mean, "not exactly"?

Mr. FITZHUGH. Well, to me there was IDC and there was Castle Grande.

Senator MURKOWSKI. They are one and the same, aren't they?

Mr. FITZHUGH. No, sir.

Senator MURKOWSKI. What's different?

Mr. FITZHUGH. Castle Grande was a residential development of manufactured homes, and the IDC was a large tract of property that included Castle Grande.

Senator MURKOWSKI. But Castle Grande acquired the IDC over a period of time?

Mr. FITZHUGH. No, sir—no, sir.

Senator MURKOWSKI. Some of it?

Mr. FITZHUGH. No, sir.

Senator MURKOWSKI. None of it?

Mr. FITZHUGH. Castle Grande did not acquire IDC.

Senator MURKOWSKI. Was there some activity that transferred land from IDC to Castle Grande?

Mr. FITZHUGH. Castle Grande was carved out of the IDC at some point in time.

Senator MURKOWSKI. So there was a transfer then, if Castle Grande was carved out?

Mr. FITZHUGH. I don't know how any of that took place. I was not part of the purchase.

Senator MURKOWSKI. You had some activity in association with Seth Ward?

Mr. FITZHUGH. My only activity is, I knew he purchased IDC.

Senator MURKOWSKI. But you had no knowledge, as a vice president and a lawyer, in your association as a vice president of the S&L that there was any limitation on activity relating to the volume that was occurring in the sense of Madison funding Seth Ward for acquisition of land during this timeframe. How many vice presidents were there of the S&L?

Mr. FITZHUGH. Several; it was a——

Senator MURKOWSKI. "Several" is how many?

Mr. FITZHUGH. I would guess four or five.

Senator MURKOWSKI. Did you ever communicate?

Mr. FITZHUGH. With the other vice presidents?

Senator MURKOWSKI. Yes. Did you ever go to a loan committee meeting?

Mr. FITZHUGH. Never.

Senator MURKOWSKI. Never went to one?

Mr. FITZHUGH. Never.

Senator MURKOWSKI. Not one at all?

Mr. FITZHUGH. Not one.

Senator MURKOWSKI. Did you ever go to one that associated itself with the Madison Financial?

Mr. FITZHUGH. I don't believe there were any.

Senator MURKOWSKI. Were there minutes kept of any of the activities of Madison Financial?

Mr. FITZHUGH. I wouldn't have any reason to know. I didn't go to any meetings where there was a secretary that would have kept meeting notes.

Senator MURKOWSKI. It is extraordinary that as a vice president, you would not have some function, as implied by the title of vice president. I find that very unusual.

But, so you didn't find anything suspicious about the activities, in discussions relative to these extraordinary land sales that were taking place, and you yourself made \$50,000 in commissions for a transaction, without really doing anything, to earn it; is that right?

Mr. FITZHUGH. Well, when you say I made it, I mean, that implies I benefited from it and I don't consider myself to have benefited from it, but I did receive it.

Senator MURKOWSKI. Your net worth increased \$50,000, didn't it?

Mr. FITZHUGH. I don't believe so.

Senator MURKOWSKI. What did it do? It didn't decrease it, did it? You say you benefited by it, what do you mean, did or didn't? Did you get \$50,000?

Mr. FITZHUGH. I turned the money over in less than 30 seconds to the savings and loan so they would make a loan to me. I never deposited it in my account.

Senator MURKOWSKI. How much was the loan to you?

Mr. FITZHUGH. Well, the full principal amount was 525, but I do not know how much——

Senator MURKOWSKI. "525" means what?

Mr. FITZHUGH. \$525,000.

Senator MURKOWSKI. So for turning over \$50,000, you received a \$525,000 loan; right?

Mr. FITZHUGH. That was used to purchase a building, so I never got any of that.

Senator MURKOWSKI. And what was the interest rate that was charged on that loan?

Mr. FITZHUGH. Ten.

Senator MURKOWSKI. A 10 percent rate?

Mr. FITZHUGH. Yes.

Senator MURKOWSKI. You paid the interest——

Mr. FITZHUGH. I paid——

Senator MURKOWSKI. —and the principal back?

Mr. FITZHUGH. —every month.

Senator MURKOWSKI. As an attorney, why would it be necessary that you get \$50,000 in commission and have to turn it over to the bank. And then, in consideration for a loan, you usually go into a S&L and you put up collateral you get the loan or you don't, but here you basically turned your \$50,000 commission over as consideration for a nonrecourse loan? As a lawyer do you consider that a questionable transaction and process?

Mr. FITZHUGH. Well, at the time that it was taking place, as I mentioned earlier, you know, I felt like it was not my position to question everything they were doing. Certainly it raised my eyebrows when he first said, do you have a brokers' license, you are going to purchase this building, certainly I was shocked——

Senator MURKOWSKI. You do not need a broker's license to purchase a building?

Mr. FITZHUGH. No, but I had to have a broker's license so that he could pay me the \$50,000.

Senator MURKOWSKI. You didn't question the legitimacy of that? The fact that that isn't an everyday occurrence, when you go to your S&L to borrow money, that you get a commission for a transaction that you are involved in and you pay that back to the S&L? How much was the building—you borrowed \$525,000?

Mr. FITZHUGH. Well, as I stated earlier, I believe that's the note amount. But as far as how much was advanced, I don't know.

Senator MURKOWSKI. You do not know what you paid for the building?

Mr. FITZHUGH. I believe it was \$500,000.

Senator MURKOWSKI. It was \$500,000, and you were advanced \$525,000?

Mr. FITZHUGH. No, sir.

Senator MURKOWSKI. What were you advanced?

Mr. FITZHUGH. I do not remember——

Senator MURKOWSKI. You don't know?

Mr. FITZHUGH. —what I was advanced. Probably \$450,000, the \$50,000 commission, and another \$450 would make up \$500.

Senator MURKOWSKI. So you got the \$50,000, you paid it to the bank in consideration for a \$450,000 loan, OK. And then you had to pay that \$50 back, so you actually had to pay the bank back \$500,000; is that right? But you don't know.

Mr. FITZHUGH. You are kind of losing me here on these——

Senator MURKOWSKI. Well, I'm just trying to get—you don't know what you paid for the building?

Mr. FITZHUGH. I believe the sales price was \$500,000.

Senator MURKOWSKI. And you borrowed how much?

Mr. FITZHUGH. Well, the note was set up for \$525. I believe at the time that note closed, I borrowed and was advanced \$450,000, plus the \$50 on the commission, would be \$500 for the sales price of the building.

Senator MURKOWSKI. Yes, but the \$50 on commission, was that part of the note? Was that added to the \$450?

Mr. FITZHUGH. I don't really know.

Senator MURKOWSKI. And yet you say that they made a note for \$525,000 and you got \$450 or you got the \$50 that was added back. I don't know, Mr. Chairman.

Mr. FITZHUGH. I don't think the \$50 was added back into what I borrowed, no.

Senator MURKOWSKI. Let's assume that you paid \$500,000, but they advanced \$525,000. What happened to the other \$25,000?

Mr. FITZHUGH. I don't believe it was ever advanced.

Senator MURKOWSKI. You don't think it was ever advanced, OK. But you bought a building that you never saw, I guess, previous to buying it?

Mr. FITZHUGH. Prior to purchasing it, that's correct.

Senator MURKOWSKI. That causes me, for a lawyer and a banker, that's hardly a normal function when you are going to buy something. And then I gather you told us that McDougal told you he was in a hurry to process the transaction to clean up the Madison books. Did he know the examiners were coming?

Mr. FITZHUGH. I don't really know what his timeframe was, but you are correct, he was anxious to get it done.

Senator MURKOWSKI. But he didn't know the examiners were coming. Did you know the examiners were coming?

Mr. FITZHUGH. I don't know what he knew. It was always a rumor, the examiners were—

Senator MURKOWSKI. Did you ever meet with the examiners?

Mr. FITZHUGH. No, sir, I did not.

Senator MURKOWSKI. They never questioned you?

Mr. FITZHUGH. No.

Senator MURKOWSKI. Well, Mr. Chairman, that is extraordinary banking procedure.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Mr. Fitzhugh, I am looking at the Federal Home Loan Bank Board Report of Examination, and they list a number of vice presidents for Madison S&L, senior vice president. In fact, they list one, two, three, four of them. Was that the situation? You were not the only vice president, I take it?

Mr. FITZHUGH. I don't believe there was another male person there that was not a vice president. There may have been some but I do not recall who they were.

Senator SARBANES. Were you a senior vice president?

Mr. FITZHUGH. No, sir.

Senator SARBANES. Was there a distinction between vice president and senior vice president?

Mr. FITZHUGH. Other than title. I mean, the titles were more or less meaningless.

Senator SARBANES. Was a senior vice president regarded as being of higher rank than a vice president?

Mr. FITZHUGH. There just wasn't any true rank per se. I understand what you are saying. Under normal circumstances, certainly that would have been the case.

Senator SARBANES. But everyone was a vice president? Not everyone, but a great number of people were vice presidents, right?

Mr. FITZHUGH. Yes.

Senator SARBANES. So the fact that you were a vice president is not like when there's only one vice president like of the United States; is that correct?

Mr. FITZHUGH. No, no, it's not quite as significant.

Senator SARBANES. I want to ask about this property that's up there on that board. Is that entire colored area the IDC property?

Mr. FITZHUGH. Well, there was actually—I believe there's some property that was not out here that was actually owned by the IDC that was purchased at the same time and it was located in a different industrial park.

Senator SARBANES. OK. But the reference to the IDC property encompassed certainly all of that property and it may have encompassed other property. This was the property acquired by Madison from the Industrial Development Commission; is that correct?

Mr. FITZHUGH. Industrial Development Company, yes.

Senator SARBANES. Company, sorry. Now, Castle Grande was a portion of this IDC property; is that correct?

Mr. FITZHUGH. That's correct.

Senator SARBANES. Castle Grande was where they were going to do the so-called trailer park? Actually, I think they had a more upscale name for it than that.

Mr. FITZHUGH. Yes. It really wasn't a trailer park because there were large tracts of land that had manufactured housing on it.

Senator SARBANES. Now other parts of the IDC property were to be used for commercial and industrial development; is that right?

Mr. FITZHUGH. Yes.

Senator SARBANES. And also other forms of residential development as well?

Mr. FITZHUGH. I believe the only plans for residential development were south of 145th Street, which is that light blue color up on your chart.

Senator SARBANES. But that's different from the Castle Grande property?

Mr. FITZHUGH. Castle Grande is part of that. Castle Grande is where the blue is.

Senator SARBANES. Was all of that blue or just part of it, the manufactured home section?

Mr. FITZHUGH. Well, I don't know how much ever became manufactured homes, but primarily it was the land right next to 145th Street, right on it.

Senator SARBANES. OK. When this property was first acquired, I take it, it was referenced as the IDC property; is that correct?

Mr. FITZHUGH. Yes, sir, as far as I know.

Senator SARBANES. That's how you knew it?

Mr. FITZHUGH. That's exactly how I knew it.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me pick up on the questioning of the Senator from Alaska. There isn't any question but that there were ex-

traordinary banking practices that went on at Madison Savings & Loan during the timeframe that we're talking about, isn't that so?

Mr. FITZHUGH. Correct. Also, it was before the RTC existed, it was before the big savings and loan scandal, and people were not walking around constantly thinking, is this bank doing something illegal? You know, today that may be in the back of everyone's head, but 10 or 11 years ago it wasn't. You didn't question what everyone did.

Mr. BEN-VENISTE. But in fact, with all deference to you and the extent of your knowledge, there were other transactions that went on and they rose to the level where a Federal Grand Jury sitting in Little Rock returned an indictment against Mr. James McDougal and others?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. Mr. McDougal and others stood trial before a jury, there was an extensive trial in which you testified, these extraordinary practices were all laid out and that case resulted in an acquittal?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. But there were hundreds of trials around the country involving operators of savings and loans who were charged with having engaged in improper or fraudulent transactions?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. And that all grew out of the same basic situation where funds were loaned and could not be repaid and that caused the savings and loans to collapse or to be taken over and substantial costs incurred by Federal insurance and regulatory agencies. We are not inventing something new here; this savings and loan crisis has been the subject of very considerable discussion. We have seen in the index to the reports literally dozens of monographs written about the causes of savings and loans collapsing in this country.

But let me ask you, in connection with the Federal Home Loan Bank Board examination which occurred in 1986, did anyone from the Rose Law Firm come over to prepare you for that examination?

Mr. FITZHUGH. Well, no one from the Rose Law Firm spoke with me, and I was not part of that examination.

Mr. BEN-VENISTE. Indeed, to the best of your knowledge, no one from the Rose Firm had anything to do with that examination?

Mr. FITZHUGH. Not that I'm aware of, no, sir.

Mr. BEN-VENISTE. Nothing further.

The CHAIRMAN. Senator Faircloth.

OPENING STATEMENT OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Just a brief statement, Mr. Chairman. As you know, there has been a growing pressure from some Democrats to end the hearings at the end of February; and there have been suggestions that the hearings are political. Last night I watched ABC News and I learned that the White House put out a negative press package against Chairman D'Amato. It would seem to me that the hearings would be over a lot quicker if the White House put its time and attention to answering our document requests, such as E-mails, then having tax dollars and Government-paid lawyers prepare hit

pieces against this Committee, particularly the Chairman. We already know they use the White House legal counsel for personal legal work.

What it comes down to, Mr. Chairman, is that the people who are clamoring this is political are the very same people engaged in some of the most blatant of politics to try to end the hearings.

I think it has become pretty clear that the White House is trying to end the hearings, and it suggests to me that they are afraid we will find something. For that very reason, I think that's the best reason I can think of to keep the hearings going and continue them after February.

Mr. FITZHUGH. I have been dealing in land—buying and selling real estate—or buying mostly for the last 50 years. I heard your testimony and I have never ever ran into such things as you are talking about doing. Let me ask you, did you ever make from Madison a legal, properly collateralized loan?

Mr. FITZHUGH. I was not on the loan committee and I do not know what type of loans they made or to whom they were made. I was not part of the loan process at that savings and loan.

Senator FAIRCLOTH. I've been listening to you. What did you do?

Mr. FITZHUGH. I worked on their broker-dealer, setting up a broker-dealer for them, and I worked on some of their real estate projects. And it was not—you know, let me say this: It was not a job where I was busy completely 8 hours a day. I feel like they were looking for things for me to do.

Senator FAIRCLOTH. Well, it certainly would appear that way. The attorney for the other side keeps referring to them as unusual loans or unusual lending practices. If that isn't a euphemism for crookedness, I never heard it. But that certainly seems to be what these loans were.

Anyway, Mr. Nash, you know Bruce Lindsey, of course?

Mr. NASH. Yes, sir, I do.

Senator FAIRCLOTH. You had a call from him in 1993, asking you about the meeting in the trailer?

Mr. NASH. He called me, I believe it was in 1993 when I was at USDA and asked me did I remember being in a trailer, meeting with Mr. McDougal and Governor Clinton; and I said yes, I do remember a meeting. I didn't characterize it as a meeting. I characterized it as a visit or a drive-by.

Senator FAIRCLOTH. Did you ask him why he wanted to know?

Mr. NASH. No, sir, I did not.

Senator FAIRCLOTH. You had another call from him on the same thing in November 1995?

Mr. NASH. Yes, sir, approximately that time.

Senator FAIRCLOTH. What did he ask you about then?

Mr. NASH. The same thing, did I remember him asking me earlier had I been in a meeting; and I said yes, I do remember you asking me earlier.

Senator FAIRCLOTH. Did you ask him why he wanted to know?

Mr. NASH. No, sir.

Senator FAIRCLOTH. And you didn't have any curiosity as to why Bruce Lindsey would be asking you about a meeting with Bill Clinton, you rolled with it and didn't ask him why he wanted to know?

Mr. NASH. I assumed that he wanted to know because of all that has been going on here and before.

Senator FAIRCLOTH. This was November 1995. Give me a little detail of that conversation.

Mr. NASH. I just did. That was the extent of it.

Senator FAIRCLOTH. You didn't find it perked your curiosity alot that Mr. Lindsey was wanting to know about a meeting in a trailer between Governor Clinton and McDougal?

Mr. NASH. Senator, I made an assumption that it was about the activity going on here today and before.

Senator FAIRCLOTH. Mr. Nash, you are head of Presidential Personnel at the White House now?

Mr. NASH. Yes, sir, that is correct.

Senator FAIRCLOTH. It is my understanding that last week, the Commodity Futures Trading Commission appointed Mr. John Tull as interim head of this agency, a longtime friend of the Clintons from Arkansas.

Senator SARBANES. Mr. Chairman, that's not within the scope of this inquiry. I mean, no way, shape or form that's within the scope of this inquiry.

Senator FAIRCLOTH. It's not a question. It's a statement.

Senator SARBANES. Pardon.

The CHAIRMAN. Senator, I give great latitude to all of the Senators, Republicans and Democrats. If the Chair sees this going off, the Senator has a right to make his statements and we're going to proceed. Continue, Senator.

Senator FAIRCLOTH. It is my understanding that last week the Commodity Futures Trading Commission appointed John Tull. I have heard that the White House is considering nominating a close friend of Hillary Clinton's, someone without a background in the area, to run the CFTC permanently. Have you heard that?

Senator SARBANES. That is outside the scope of this inquiry, Mr. Chairman.

The CHAIRMAN. Let me say this to you.

Senator SARBANES. Well, it clearly is.

The CHAIRMAN. Let me say that the Senator asked a question. If Mr. Nash wants to answer or has an answer or knows or doesn't know, he can answer.

Senator SARBANES. Well, I don't think Mr. Nash would be put in the position of having to decide whether to answer or not if the question is improper as being outside the scope of this inquiry, to begin with.

The CHAIRMAN. What is your observation, counselor? Why don't you sit down and when I say "sit down," I mean, take a chair there and pull it over to that microphone.

Mr. SIMPSON. Mr. Chairman, I only would raise an objection that that question is totally outside of what we understood Mr. Nash was going to be asked about. He hasn't had a chance to be prepared on that. I think it's unfair to go into an area that's not within the Resolution and without notice.

Senator FAIRCLOTH. What I'm getting to, and I can get there real quick. We are still going with these friends of Hillary. We appointed—I opposed Ricki Tigert for FDIC because I said it was going to be right back where we are today, she would be making

judgments on Mrs. Clinton, which is exactly where we are with the RTC, folded into the FDIC. Ricki Tigert is making judgments on what was described as her favorite hanging-out pal, Mrs. Clinton.

Now, we are getting ready to appoint another lady or talking about doing it and getting into the same trap, and I'm going to say we ought to stop it before we start it.

The CHAIRMAN. The Chairman takes note of Senator Faircloth's statements. I think, obviously, we've talked about issues that come here, we've talked outside of them, but I don't think that Mr. Nash really should be required to answer that. Certainly the Senator makes his comment, and I don't think that this is really the time to take that up; that's on the Senate Floor or in that Committee, et cetera. I don't think it comes before this Committee even as a Banking Committee, but Senator—

Senator FAIRCLOTH. That's all, I'm through.

The CHAIRMAN. Thank you, Senator.

We have a few minutes left, Mr. Chertoff.

Mr. CHERTOFF. Mr. Fitzhugh, I just want to step back and focus on this entire set of transactions. In the fall of 1985, your understanding was that this IDC tract, this entire piece of property, the whole thing, was being bought by Madison Financial but that it was split between Seth Ward and Madison Financial on paper so that Ward could warehouse the property to avoid limitations on the amount of property Madison Financial could show on its books; is that correct?

Mr. FITZHUGH. I believe I was aware that the property had been purchased and there was a division of ownership right down 145th Street, and that one side was purchased by Madison and one side was purchased by Seth Ward. Now as far as the particulars of what you're talking about, that Seth Ward was warehousing that, you know, at this point in time, I'm aware of that because it's been in the news so much and I may have found out about that back then, but it was not something that was talked about on a regular basis that that's what was occurring, but that is what happened.

Mr. CHERTOFF. You knew that Madison Financial controlled Seth Ward's property and that he would do with the property what they wanted him to; right?

Mr. FITZHUGH. Well, when you say I knew that, I guess that was kind of an understanding that that would take place.

Mr. CHERTOFF. If I can have one moment, I would like to put up MG 797.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I want to address the comments by Senator Faircloth about a growing pressure to end the hearings, and to simply say that's absolutely not the case. What is at work is an effort to intensify the hearings in order to complete our work as provided by in the Senate Resolution.

Yesterday, the Committee heard testimony from two bank examiners, James Clark and Dawn Pulcer, about their work 10 years ago on an examination of Madison Guaranty Savings & Loan. Both Mr. Clark and Ms. Pulcer gave extensive public testimony just last summer on August 7th, on these very same matters before the House Banking Committee. In fact, Mr. Clark and Ms. Pulcer testified for several hours at the House hearings and the transcript of

that testimony is some 200 pages long. Mr. Clark also testified fully about these matters in the RTC investigation of Madison Guaranty conducted by Pillsbury Madison & Sutro. The report of Pillsbury Madison & Sutro to the RTC has now been made public.

The Committee spent an entire day obtaining testimony from Mr. Clark and Ms. Pulcer. That testimony essentially covered the same ground as the prior House hearings and the Pillsbury Report. It was asserted that the House did not touch on Castle Grande and reference was made to one exchange on that subject. An examination of the RTC investigation by Pillsbury Madison & Sutro indicates that there was extensive discussion of that subject and it, in fact, is included at some length in the Pillsbury Madison & Sutro Report.

I think it was clear yesterday at the hearing that the personal knowledge of Mr. Clark and Ms. Pulcer on Madison Guaranty transactions was less specific and complete than the information that had previously been made public in the Pillsbury Report and elsewhere.

Now, my view is that this hearing was not an efficient or productive use of the Committee's time. The Committee has a number of witnesses that it can hear from who can contribute more to developing a hearing record than yesterday's witnesses, since they have already developed a public hearing record in two fora.

Obviously, if the Committee does not take care to avoid needlessly repeating matters that already have been fully explored and made public, these hearings could go on indefinitely. They, indeed, could go on forever.

It is my strongly held view, as I indicated in the report to the Senate, that if that happens, the public perception that this is a political exercise will increase and the credibility of the Committee and the Senate will suffer; and I hope we can avoid that and that's why we've pressed hard to intensify the hearing schedule and the number of people coming before us.

Now on that point, Mr. Chairman, I would like to ask about David Hale. In March 1994, Hale entered into a plea agreement with the Independent Counsel, providing that he "will not be further prosecuted for any crimes related to his participation in the conduct of the affairs of Capital Management Services, Diversified Capital, Inc. and Madison Guaranty Savings & Loan and any other crimes to the extent David Hale has disclosed such criminal activity to this office as of the date of this agreement." That's the agreement between Hale and the Independent Counsel, in effect, giving him immunity from any crimes related to those matters which I enunciate.

In October of last year, you and I wrote to Kenneth Starr, the Independent Counsel, and advised him that the Committee intended to proceed with this investigation, notwithstanding Starr's concerns about the effect the Committee's hearings might have on his investigation because of the Committee's strong interest in concluding its work by February 29, 1996, as provided for in Senate Resolution 120, which authorized this Special Committee and set out the parameters within which we would function.

Mr. Chairman, you stated that the Committee should receive testimony from Hale, and in fact at a hearing in November said, and

I quote, "I would like to bring him in sooner rather than later so that he can testify and so that he can be examined."

On December 7, after a meeting with Independent Counsel Starr, who, of course, has interposed objections to us hearing from a number of witnesses, the Chairman asked Minority Counsel to work with Majority Counsel to arrange for Hale's deposition. Throughout December our Counsel, in fact, urged the Majority Counsel to begin the process of arranging for Hale's testimony. And we pointed out in early January that no document subpoena or deposition notice had been sent to Hale.

We were then advised by the Majority Counsel after a document subpoena had been drafted and submitted to them for review that Mr. Hale's new counsel, Theodore B. Olson of Gibson, Dunn & Crutcher, had two Supreme Court arguments in January and that the Majority had agreed to wait until after those arguments to send Hale a document subpoena.

Now those arguments, as I understand it, have taken place, they have come and gone, the basis on which a document request was not made at the time in a timely way to Mr. Hale. I don't know, but I am led to understand that the Chairman and the Majority staff have had discussions with Hale's new attorney, Mr. Olson, about Hale's availability. If those discussions have taken place, the Minority was not included in them. I don't know whether there have been discussions with the Independent Counsel about this matter. If so, the Minority has not been included in them.

So, I guess my first inquiry is in regard to the discussions with Mr. Olson and Mr. Starr. What is the Chairman's current understanding of Hale's availability as a witness?

Second, I would say to the Chairman—

The CHAIRMAN. I was going to say to my colleague if you think that I'm going to answer a series of questions, you're mistaken, number one. Number two, if you want to put them all out on the record, you certainly have a right to do that, but I think that to pose these questions without discussing them with me, and you have ample opportunity, or with Counsel, because we have had discussions with respect to this, is highly unusual. But if you choose to conduct yourself in that manner, that's your business and it's on your time, so continue. It's on your time.

Senator SARBANES. I understand that.

The CHAIRMAN. Right.

Senator SARBANES. Mr. Chairman, we have repeatedly discussed them with you and with Majority Counsel. There have been repeated discussions between Majority and Minority Counsel about these matters. The last time we had an extended discussion, we were told that the Majority had apparently had a discussion with Mr. Hale's new attorney, I think Mr. Olson had just been brought in, and that Mr. Olson had cases pending in the Supreme Court, that were to be argued in mid-January. And you were deferring to that and intended to pursue this matter, as I understood it, immediately thereafter.

Now, we have not, as I understand it, issued a subpoena for the Hale documents, we have not made any arrangements to take the Hale deposition, despite efforts to do so beginning well back in the fall. I'm at a loss to understand why there hasn't been some follow-

up on this matter, and I've put it on the public record because repeated efforts to explore this matter with the Majority have been unsuccessful. We were told, well, we need to ascertain this and then we will move forward. The Chairman himself had indicated earlier his intention to move forward on this matter. And, you know, I think we should have proceeded on it, and I don't think that the Hale matter ought to, in the end, then, turn out to be another assertion of why the Committee has to continue its work when at least we have pressed continuously to try to get both a document request out and a deposition request out.

Mr. Chairman, the red light has gone on and therefore I will—

The CHAIRMAN. Before I recognize Senator Grams, the Senator is absolutely correct as it relates to our intention that I have stated publicly and that we have discussed on numerous occasions, both through our Counsels and together, and also together with the Special Prosecutor. Obviously, Mr. Hale and his testimony will be an important part of the considerations that this Committee has to give as it collects the various evidence and statements and attempts to get the facts, and that's what we are trying to do, to get the facts. So that's important.

Now, the Senator is absolutely correct, we did contact Mr. Hale's new attorney, Mr. Olson. Mr. Olson advised us that he was not in the position to begin to consider bringing Mr. Hale in, inasmuch as he had two Supreme Court cases that he had to argue the end of January and that he would not consider that nor could he take the time until he had disposed of these matters, that he was pre-occupied and was not prepared to bring his client in.

This Committee is very aware, as I am sure my learned colleague is, as well as his distinguished counsel and co-counsels, that there are any number of things, if we are to press this matter in a way that did not meet with Mr. Hale's attorney, that he could do.

He could assert that he would, if subpoenaed, raise the defense of the Fifth Amendment, that he would assert that privilege. If he did that, we would not be able to bring him in, not unless the entire Senate was ready to vote to give him immunity. I do not want to be accused, nor do I think the Committee wants to be accused, of creating a situation where we specifically dealt with that in the Resolution as it relates that we would not grant immunity unless we have, very specifically, the approval of the Special Counsel, because there have been problems in the past with Congressional Committees granting immunity and arguments as it related to them thereby impeding prosecutions where there was a Special Prosecutor. The Senate was quite explicit with respect to that.

So that, my friend and colleague, is our reason for handling this matter in what I think is an absolutely appropriate manner.

Now as it relates to Mr. Olson indicating that he had two Supreme Court arguments at the end of January that he had to deal with, January 17th, my colleague tells me. The fact of the matter is that one of those, in a most unusual occurrence, was postponed to sometime in February. That almost never, never, never takes place. It is extraordinary when an argument before the Supreme Court is put over, and the reason was one of the reasons that this Committee even delayed at the request of the Minority our putting our reports out and answering, was the snowstorm.

One of his clients or co-counsel, I am not sure which, this was reported to me by my Counsel, could not get into DC for that argument. I don't know where they were trapped but the Court took this extraordinary action of moving the case over. So when we contacted Mr. Olson thereafter, we were told I am sorry, this case is put over, I have not had an opportunity to give to Mr. Hale the attention necessary to decide what our position will be. And we are in this situation.

We've discussed this before. This Committee and this Chairman have no reason not to want to hear Mr. Hale and to get his testimony. So I'm sorry that I had to take the time to explain it in this manner, and I'm equally sorry that my colleague felt the necessity of attempting, I think, to put this in a manner, and I note that I did not interrupt, and I would hope that we have the same courtesy, to put this in a manner that would attempt to embarrass the Chairman or attempt to cast doubts on the sincerity that we have in bringing key witnesses before this Committee. It's wrong, it's counterproductive, but I'm going to say it again. We're going to continue to seek the facts. We would like to handle as many witnesses as we possibly can.

It seems to me that if my colleagues would help in attempting to get facts, we could move this process. There have been cases where we have had extended reviews of documents that we heard read into the record 6, 7, 8, 9, and 10 times from Members on the Minority side, and that does not aid the process. So if it's to wear us out by trying to make the hearings less than factfinding, to make it difficult, to impede it, to slow it down, to cause maybe the media to lose interest in it, I have to tell you, others may lose interest in it, but we're going to proceed. We're going to get the facts, and we're going to attempt to be as fair as we possibly can be, to everybody. And we recognize that you can't have total recall in situations, so we're going to continue to proceed.

Senator Grams.

Senator GRAMS. Thank you very much, Mr. Chairman.

Mr. Fitzhugh, I have a couple of quick questions that I would like to go back over with you again to try to straighten out some of these questions that I have about this missing \$25,000, and I'm just going to put this back up on the Elmo again and go through the transactions.

I know you received a \$50,000 commission and a \$475,000 loan. Now a couple of minutes ago when Senator Murkowski was talking or questioning you, you brought up a \$450,000 loan. I think the records show that it was a \$475,000 loan. So what we can assume from this is that from your \$50,000 commission, you put \$25,000 cash into the \$500,000 deal plus the \$475,000 loan. Now, you did say you had another account that was to cover outside expenses dealing with the closing of this property. Are you familiar with a closing statement? I'm sure you are. A closing statement—

Mr. FITZHUGH. A closing statement, yes. I haven't seen the one on this property for awhile.

Senator GRAMS. We saw the deeds from Madison to Seth Ward to you. Now on the closing statement it would detail the price of the property, the amount of money you would put in, the amount of money of the loan. It would also detail all the expenses, State

deed taxes, transfer taxes, appraisal fees. Everything else would be listed. It would also say who would pay these fees, whether it would be the seller or the buyer. It would come down to a bottom line of what were your liabilities.

So from that we could say that the \$25,000 was to cover this. You said it was put into an account which was also the account you used to make the payments to the bank after receiving rents from Levi. So if you have that, is there a way we can get a record to find out exactly what the closing costs were and where this other \$25,000 went?

Mr. FITZHUGH. When you say that \$25,000 was put into my account, I know that wasn't true. I never had a \$25,000—

Senator GRAMS. I thought that's what you said.

Mr. FITZHUGH. No, sir. I said I'm not sure if this loan had ever been fully funded.

Senator GRAMS. Well, the transaction said it was and that's why a closing statement would say that. And if you gave back a \$50,000 check, we should know where that \$50,000 went and what it was credited to.

Mr. FITZHUGH. I would suspect it would show up as earnest money and that there would be a line on the settlement statement that would say, "First mortgage, \$450,000."

Senator GRAMS. We have it here, \$475,000 is the first mortgage according to the records.

Mr. FITZHUGH. Well, that may be true that the mortgage—sometimes a mortgage is filed for an amount higher than the amount funded. That's rather common.

Senator GRAMS. All right. And the financial statement would show that?

Mr. FITZHUGH. The closing statement.

Senator GRAMS. The closing statement. You're familiar then, too, with the financial statement, your net worth?

Mr. FITZHUGH. Mine? Yes, sir.

Senator GRAMS. You say you didn't gain from this, but you know if you put this money down, say \$25 or even the \$50,000 against a \$500,000 purchase, it would show a net worth gain to you of \$50,000?

Mr. FITZHUGH. That's correct.

Senator GRAMS. It could also show a net gain of a half million if we use Mr. Betts' appraisal of \$1 million?

Mr. FITZHUGH. If I chose to use that, that's correct.

Senator GRAMS. It could give you leverage so there was some benefits, whether—

Mr. FITZHUGH. I never altered my financial statement based upon the purchase of this building.

Senator GRAMS. But it would also encumber you as far as other future loans—

Mr. FITZHUGH. That's correct.

Senator GRAMS. —because you would be exposed financially, so it could be either a plus or minus?

Mr. FITZHUGH. Well, yes, sir, you're right.

Senator GRAMS. What I am trying to get at is there is a lot of things that you should have or maybe did consider when you agreed to sign these papers to assume this portion of the property?

Mr. FITZHUGH. It happened rather quickly. I didn't sit around and think about this for a month or two. It was probably a span of certainly less than a week between when it was proposed and when all the papers were dated and so forth, and I'm sure there are little things, you know, you could think about if you had the time, but you're absolutely right.

Senator GRAMS. I would just like to ask the Chairman if there's any way we could get a look at the closing statements. I don't know if that's proper to ask or——

The CHAIRMAN. I don't know what statements, if any, might be available. But I'll certainly ask the Committee and Counsels to see if they can come up with any. I don't think they exist, at this point in time, but let's take a look and see if we can get them, if the RTC, anybody else has them.

Senator GRAMS. I think that would help to clear up a lot of the questions. I want to thank the witness.

Thank you, Mr. Chairman.

I would yield the remainder of my time to Senator Murkowski.

Senator MURKOWSKI. Thank you very much, Senator Grams.

I would like to point out for Senator Sarbanes' consideration that he puts a lot of credibility in the Madison Guaranty Savings & Loan report done by Pillsbury Madison & Sutro.

As a former banker, I put less credibility in this for a number of reasons. First of all, you rely on the actual examination and the statements of the examination as signed by the examiners. That's really the constituted effort of those that are on top of the specific legality associated with the operation of the lending function and the internal workings of the institution. I would also add one more important thing that I think the Senator from Maryland has overlooked, is that this does not contain any of the information associated with the Rose billing records, which were not available when this report was done and had they been available, Mr. Chairman, I can assure you there would have been different conclusions and certainly different insinuations associated in this report. I think it's important that the Committee reflect on that.

Let me just run through a couple of things as I understand it, Mr. Fitzhugh. You knew the loan portfolios were in disarray and you indicated that you knew there was an examination at some time in the future?

Mr. FITZHUGH. Yes, sir.

Senator MURKOWSKI. You knew that the Rose Law Firm was on a retainer for Madison?

Mr. FITZHUGH. If I knew that, it was because of hearsay down at the bank, but yes, I probably knew that.

Senator MURKOWSKI. And Mr. Fitzhugh, you knew that Seth Ward was used as a purchaser of land on behalf of Madison?

Mr. FITZHUGH. I knew he purchased the land but his exact deal with McDougal, I was not privy to the details.

Senator MURKOWSKI. All right. And you indicated that McDougal ordered you to take an insider loan to purchase part of the Castle Grande property and he wanted to do it in a hurry to get the property off the books?

Mr. FITZHUGH. That's not exactly what I said but that's close.

Senator MURKOWSKI. OK. As a vice president and officer, could you contract for Madison?

Mr. FITZHUGH. For instance, contract in what sense?

Senator MURKOWSKI. Well, as an officer, could you bind the corporation?

Mr. FITZHUGH. I would suspect that there would need to be a corporate resolution. Depends upon what you're talking about.

Senator MURKOWSKI. You are an officer. Could you bind the corporation? You are an agent of the corporation. Could you bind it as an officer and vice president?

Mr. FITZHUGH. If it was within my authority, I probably could.

Senator MURKOWSKI. You do not know what your authority was?

Mr. FITZHUGH. No, sir, it was never specifically spelled out.

Senator MURKOWSKI. Now, the examiners yesterday told us that Madison S&L was listed for special supervisory attention——

The CHAIRMAN. If I might, Senator——

Senator MURKOWSKI. I'll be very brief. I have about 1½ minutes and I'm through.

The CHAIRMAN. Well, Senator Sarbanes is insisting on strict adherence——

Senator MURKOWSKI. Well, then I'll insist that I have the opportunity to finish.

Senator SARBANES. You'll have another round.

Senator MURKOWSKI. That's fine, that's fine.

Senator SARBANES. Fine.

Senator MURKOWSKI. That's fine. I'm ready for another round.

The CHAIRMAN. Let me say this because the situation is not a healthy one when we conduct ourselves in this manner. If the Minority insists on it, we will do that, but understand that brings into play the Majority insisting on strict adherence on many things. I'd hope that we could avoid that. The Chairman could point out that, indeed, Senator Murkowski has an additional 5 minutes.

Senator MURKOWSKI. I don't have that long, Mr. Chairman.

The CHAIRMAN. No, no, bear with me, if you might.

Senator MURKOWSKI. I understand.

The CHAIRMAN. I make the observation that under the rules and procedure of this Committee, when there are less than five Senators, we can give up to 15 minutes to the Senator.

Senator SARBANES. Well, the Chairman is right and if he wishes to invoke that, then Senator Murkowski should proceed. I have absolutely no objection. I don't know how much time has been used.

Senator MURKOWSKI. We're running most of it right now.

The CHAIRMAN. Senator, proceed, we will get an extra 4 minutes. An additional 4 to bring it to the 15.

Senator MURKOWSKI. Thank you, Mr. Chairman.

My question is relative to the testimony yesterday where the examiners advised us that Madison S&L was listed for special attention and that was late in 1984. They were listed for special attention. The institution had agreed to provide a compliance report back to the Federal Home Loan Bank Board because there was concern expressed in an 1984 examination over the condition of the institution. Now those compliance terms are quite stringent. You were not aware that there was any compliance or mandatory re-

porting associated with the activities of Madison S&L during the tenure that you were there?

Mr. FITZHUGH. Sir, at the time I took a job with Madison, I was told by a friend of mine that they were looking for someone in their real estate department so I called them. I had never heard of Madison Savings & Loan, I didn't know who Jim McDougal was or John Latham. I was not aware of any compliance agreement or any restrictions they were under at the time I started work down there. I didn't even know where the place was.

Senator MURKOWSKI. When you worked there, you certainly conversed with the other officers and had occasion over coffee or other things to discuss the institution that paid you, didn't you?

Mr. FITZHUGH. There came a period of time, and I don't know if it was 1 month or 6 months or 12 months or what, that I did find out that Madison was under some kind of orders about what they could and couldn't do, but I never knew what they were, I just knew they were out there.

Senator MURKOWSKI. And as a lawyer, that didn't cause you to question activities in the daily occurrence of your duties to insure that there would not be any criticism relative to unusual financial dealings which you yourself took part in and received \$50,000 consideration for a half million dollar loan?

Mr. FITZHUGH. Well, I was not making any loans to any parties.

Senator MURKOWSKI. You never made a loan in your life?

Mr. FITZHUGH. No, sir.

Senator MURKOWSKI. But you accepted a loan?

Mr. FITZHUGH. Yes, sir.

Senator MURKOWSKI. And you, at that time, indicated that you knew that the S&L was under some kind of a compliance order?

Mr. FITZHUGH. No, sir, no, sir.

Senator MURKOWSKI. Just a minute. You said you didn't know it before but you learned of it when you were working with the institution. You just told the Committee that.

Mr. FITZHUGH. At some point in time, but I don't remember exactly when.

Senator MURKOWSKI. But during the time you were employed by them, you would have this Committee believe that in conversing with officers in the bank, that you had no knowledge that the S&L was under direct orders from the Federal Home Loan Bank Board to clean up its act or there would be hell to pay?

Mr. FITZHUGH. I did not know that until a later time, and I do not know the time.

Senator MURKOWSKI. Mr. Chairman, I just find it extremely disturbing that the witness was involved in transactions and tells this Committee that he was somewhat of an innocent bystander where he was clearly involved by accepting a loan and that the circumstances of that loan in financial circles are absolutely uncalled for. How can you as a lawyer, I understand you have an MBA and work in an association, accept checks in payment and overlook the irregularities and almost the generalization of corrupt activities associated with that. How any lawyer involved in real estate transactions would not have some idea of what's going on is beyond me.

Mr. Fitzhugh did the Bar Association in Arkansas ever look into any of these activities, to your knowledge?

Mr. FITZHUGH. No, sir.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I want to say I don't know what he was holding up from Pillsbury Madison & Sutro—

Senator MURKOWSKI. It's dated December 28.

Senator SARBANES. Well, these are the reports of Pillsbury Madison & Sutro [indicating]. And there is, as I understand it, extensive background material which takes up a number of drawers and file cabinets—apparently four file cabinets, which include all the backup material to this, their interviews, and so forth and so on. This study cost the Government \$3.8 million, as I understand it.

Senator MURKOWSKI. I would ask the Senator from Maryland if the study covers the discovery of the billing records of the Rose Law Firm, which obviously, the information the Senator from Alaska has, it does not. And I think that would shed an entirely different light on certain generalizations. Does it or doesn't it, I would ask my good friend from Maryland.

Senator SARBANES. Well, the billing records, as I understand it, came after the report, apparently they are now looking at the billing records as well. I don't agree with the premise that it would fundamentally alter their conclusions but we will see.

Senator MURKOWSKI. I will certainly look forward to that examination jointly with the Ranking Member.

Senator SARBANES. We're perfectly happy to see that, but they do discuss extensively the representation of Madison by the Rose Law Firm. And some of it touches, in effect, on that issue, and I assume they will develop it further.

Second, I think the Senator stated that you rely on the examiner's report. Well, of course, the study took the examiner's reports and analyzed them, so they are encompassed within the study, and if you were—

Senator MURKOWSKI. I wouldn't necessarily draw that conclusion, Senator, that this is an interpretation by a competent law firm of a lot of information that it had, and opinions associated with drawing some generalizations surrounding that. It does not take the place of the actual examination of the on-site individuals who specialize and see one institution after the other, and I would suggest to you, probably have a hell of a lot more knowledge than lawyers who are simply contracted to do an evaluation of a lot of information, including examinations.

I assure you, these Federal examiners know their business and that's not necessarily to assume that a group of lawyers are better at assimilating that information and communicating it in a report.

So I'll stand by my statement. I would much rather depend on the accuracy of Federal examiners than a group of contract lawyers who give it to junior partners in the back room.

Senator SARBANES. It should be very clear that Pillsbury Madison & Sutro examined the reports and, in fact, interviewed the examiners—

Senator MURKOWSKI. So?

Senator SARBANES. —at great length, at great length.

Senator MURKOWSKI. That proves absolutely nothing. It's just a group of opinions put together in a report, but it doesn't necessarily

displace the value of the examination by the examiners who were there and specifically looking at the details associated with the individual issues at hand, as opposed to the Sutro effort, which tried to bring it all together, had additional information, which I am sure is quite valuable, but for the specifics, you want to depend on the examination.

Senator SARBANES. Well, this is their interview of Clark right here. I mean, this is the length of the interview with Clark, and obviously to do a good job, they needed to interview Clark, examine the reports, assimilate all of the other information and material that was available to them and bring the report.

Senator MURKOWSKI. I think Clark did a pretty good job yesterday of stating that for an extended period of time, in his opinion, the S&L was out of compliance with the agreement, that it exceeded its 6 percent for an extended period of time, and I don't know whether you are going to get that in the Sutro Report, but that's what the examiner said. And, you know, he has to stand behind that because he examined the institution.

Senator SARBANES. That's right, and he's been interviewed extensively by them in the course of preparing their report and that interview is available. It's right here.

Senator MURKOWSKI. Well, so is his testimony available, and I would suggest to you, Senator, that if you examine the testimony yesterday and you examine the report, you won't find in the report the same conclusion that the organization was out of compliance over the 6 percent of the net worth for an extended period of time, practically the entire time, as a matter of fact, prior to the time they were shut down. So I think we're arguing over interpretations here. I'll stand by the examiner's report rather than——

Senator SARBANES. It's all interpretation. You have the examiner's report and you have the Pillsbury Report. It's obviously got to be interpreted. I mean, I don't quarrel with the necessity of interpretation.

Senator MURKOWSKI. Then we are both entitled to interpret it our own way.

Senator SARBANES. That's the point I'm making.

Senator MURKOWSKI. That's fair enough.

Senator SARBANES. But I'm challenging the putting forth of one interpretation as representing the definitive one, that's all.

Senator MURKOWSKI. I challenge you for continually bringing up the legitimacy of one report, namely, the Sutro Report over the individual examinations, which unfortunately we don't have the availability of, to the detail I would like to, but I wish we could have the examinations in front of us in the detail that would be necessary to communicate back to some of the witnesses.

So what we're looking at here is, you know——

Senator SARBANES. Actually they're consistent with one another, that's the point I'm trying to make to the Senator.

Senator MURKOWSKI. Well, I think that's subject to interpretation, too. So let's leave it at that.

Senator SARBANES. I will leave it at that but they are consistent with one another, and I invite my colleague to examine them and reach a judgment in that regard.

Senator MURKOWSKI. Let's see what Sutro says when they have an opportunity to examine the billing records.

Senator SARBANES. Now, Mr. Chairman, on the Hale matter, it's not clear to me why a subpoena for documents could not be issued. If we're going to move ahead on the Hale matter, why we could not issue a subpoena for documents now, and the question of his own testimony—

The CHAIRMAN. I am not going to—

Senator SARBANES. Let me finish if I can make the other point.

The CHAIRMAN. Well, now let me say something to you. Everyone is entitled to make whatever statements he or she wants to make, Senator, to pose whatever questions, but you don't have a right to examine another Senator. That is not the purpose of these hearings, and I'm not going to engage you simply because you feel like attempting to divert attention from what we're trying to do.

There's a manner and a time in which to raise these questions. If you wish to do it publicly, put them out on the record, but we're going to continue these hearings as best we can. This is your time, so you go ahead and do that. I thought that I had answered the two questions that you put to us. I attempted to explain why we have this problem. We have kept you informed. Now the fact that the argument was postponed, let's check the record. If you don't believe that, then, let Mr. Ben-Veniste call Mr. Olson and ascertain for himself.

I gave you a status report. I can't do any more. Again, we want to bring Mr. Hale in, we want to bring in other witnesses, and I have no purpose whatsoever—for what reason would the Chairman not want to bring Mr. Hale in sooner rather than later? So, again, I attempted to spell it out to you, but you go ahead and you proceed and you make your statements.

Senator SARBANES. Mr. Chairman, it's quite correct that earlier on you said we were going to get Mr. Hale. We haven't gotten him. No subpoena has been issued for the documents, no subpoena has been issued for Hale to come and provide a deposition, both of which are important steps in this matter.

He's been given immunity by the Independent Counsel. Whether he will assert that before the Committee, I don't know, but I am strongly inclined to believe that the only way we're going to find out is by issuing a subpoena for him to come before the Committee. In the meantime, there's no reason whatever that I can ascertain why a subpoena for the Hale documents should not have been issued quite some time ago.

That's the situation. We've raised this issue and pressed it repeatedly. No action has been taken. I gather there have been communications by Majority Counsel with Hale's lawyer, and I take it with the Independent Counsel as well in which we have not been involved or included, and I just feel that if it's the intention not to proceed, then I think we ought to know that, but I think that we ought to move ahead and we ought to have a subpoena for the Hale documents and a subpoena for his deposition and then we'll see how Mr. Hale and his attorney react to that request from the Committee. We've been seeking that now for months, literally months, and haven't gotten anywhere with it. I see my time is up.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. FITZHUGH. I want to turn to something we have not covered yet, but it was brought up, I think, by Counsel on the other side, and that has to do with your observation that the legal work on the transaction where you were the purchaser for the Levi Strauss building was all done in-house. Do you remember being asked about that?

Mr. FITZHUGH. The deeds, you're referring to the deeds?

Mr. CHERTOFF. Yes. And I guess your testimony was that to the extent you were involved in some of these transactions, the legal work that was done on the paper was done in-house at the bank; is that right?

Mr. FITZHUGH. Yes, sir, on these deeds, I believe these were prepared in-house by us.

Mr. CHERTOFF. Now, you were not involved, I take it, in the Castle Sewer & Water sale; right?

Mr. FITZHUGH. No, sir, I was not.

Mr. CHERTOFF. You don't know anything about the work that was done at the Rose Law Firm in connection with that transaction; is that right?

Mr. FITZHUGH. No, sir, I do not.

Mr. CHERTOFF. But what you do know is that in general, your experience was that the paperwork on these, moving the property back and forth, was done by people inside the savings and loan?

Mr. FITZHUGH. Well, I really just have knowledge about this one transaction, and in that case it was done by people inside the savings and loan.

Mr. CHERTOFF. Let me see if you know about another set of transactions which are right at the heart of this entire scheme. I want to go back to this issue of the original purchase of the property, and I don't want to quibble with you about this being a straw man or warehouse deal, because I am going to read you your own testimony at page 55 of your deposition, which I think you have before you. Where it says:

Question: And are you aware that during the initial transaction, about \$600,000 worth of land or 400 acres went to Madison Financial Corporation, and the other portion of the land, which was acreage north of 145th Street, went to Mr. Ward personally?

Answer: I knew there was a split, and I guess now that you mention it, I do recall it had something to do with the highway. The north went one way and the south went the other. I thought it had to do with the fact that Madison could only have so much money in their service corporation, and they were trying to stay within the guidelines.

Question: So to stay within the guidelines, they set up Mr. Ward as a kind of the purchaser to warehouse the land; is that your recollection?

Answer: I guess that's what happened. I really didn't remember the fact that they split it until you mentioned it right now. I do remember something about that.

So what we have is this. This deal to start out with in October, and it's in the record, it's established up and down and the examiner says Ward is in there as a nominee, a straw man purchaser to make it look on paper to the examiners as if Madison Financial really is only owning part of the property when in reality, economically in terms of the risk, they really are the owner of the whole property.

Part of that deal had to do with getting Seth Ward, who is the straw man, some money or some payoff for agreeing to be in this

deal. There's a document dated September 24th, but the evidence developed in the course of these investigations indicates that it was actually backdated and prepared later, that sets forth the agreement between Ward and the bank this whole sham transaction. I want to ask how much of this you know and you were aware of?

It appears that one of those letters, one draft of that letter was prepared around September 24th, inside the bank and typed by Mr. McDougal's secretary. Did you know that?

Mr. FITZHUGH. The first time that I knew about the IDC whole picture, I believe it had already taken place, it had already been purchased.

Mr. CHERTOFF. I want to put up SW1-005. This is the second version of the September 24th agreement. There is evidence which has developed in the investigations and we're going to hear about it in the next few days, that indicates this was prepared later than September 24th. Mr. Ward, in fact, himself testified to that at a trial in Arkansas under oath, that it was backdated. Have you ever seen this document?

Mr. FITZHUGH. The one you just handed me?

Mr. CHERTOFF. Yes.

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. This document, the evidence indicates, was typed in the Rose Law Firm. Can you explain why they would have taken this document relating to the agreement between the straw man and the bank and had that typed at the Rose Law Firm?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. Did you know that as Mr. Ward continued on in his part in this transaction, getting rid of property, starting to sell the property off, as he did with your property, exactly the same thing but which he did with other parcels, did you know there came a time that he was involved in an option agreement with Madison Financial?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. And that this option involved the possibility of purchasing by Madison Financial a certain piece of this property within this entire set of land? Did you know about that?

Mr. FITZHUGH. Who was going—who had the option to purchase?

Mr. CHERTOFF. That the bank was going to pay for an option to purchase back from Ward some of this land which Ward originally took as a straw man. Did you know about that?

Mr. FITZHUGH. No, sir, no, sir.

Mr. CHERTOFF. Did you know that that option was prepared not by any of the bank's inside lawyers?

Mr. FITZHUGH. I don't know—I haven't seen the option.

Mr. CHERTOFF. Were you asked as an attorney at the bank to work on any option involving the repurchase from Ward of property by Madison Financial?

Mr. FITZHUGH. My repurchase?

Mr. CHERTOFF. No. Were you asked as an attorney at the bank to work on drafting an option that would allow Madison Financial to repurchase some of Ward's property?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. I want to give it to you, let's put it up. It's PLS 3774. This option which you're going to look at we now know, due

to billing records as well as a notation on the document, was prepared by Hillary Clinton. Did you know she was working on any part of this, any element of this deal involving IDC?

Mr. FITZHUGH. No, sir, I had no idea.

Mr. CHERTOFF. Do you know why, of all the documents that you have told us to your understanding, you know, the documents you were involved in preparing at the bank, do you know why Mr. McDougal went outside the bank and went to Mrs. Clinton to have her prepare this option document?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. Can you think of any reason based on your bird's-eye view inside that savings and loan?

Mr. FITZHUGH. Why McDougal would have wanted someone outside of the bank to prepare an option agreement?

Mr. CHERTOFF. And in particular why he went to Hillary Clinton to have her draft that option agreement?

Mr. FITZHUGH. Well, I don't know why he would pick Hillary as opposed to someone else, and I guess he either didn't want us to know about it or thought we were incapable of doing it.

Mr. CHERTOFF. Let me go back to something else, Mr. Fitzhugh, because for some reason if there's any doubt in anybody's mind about the activities of what went on in this bank, I think we ought to be clear about it.

I understand you came into the bank in 1985 not knowing what you would find there, but you would agree with me that as of February 1986, when you learned about that weekend where they were—people from the bank were in the savings and loan, making up appraisals, putting documents in the file, by then you understood there was something phony about how this savings and loan was being operated?

Mr. FITZHUGH. Yes, that's correct.

Mr. CHERTOFF. That was after you had the experience of having someone come to you in the savings and loan and ask you to sign a recourse note for your purchase of the property to put in the file in place of the nonrecourse note; right?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. You understood that the reason for this was because they wanted to show the examiners or fool the examiners into believing your purchase and your loan was a recourse loan where you were personally liable rather than a nonrecourse loan?

Mr. FITZHUGH. Well, at some point, yes, I put the whole picture together and I figured out what they were doing, that's correct.

Mr. CHERTOFF. So the point of having you sign this document was to fool the examiners about the actual condition of what had gone on with respect to the sale of this piece of property?

Mr. FITZHUGH. I believe their intent in having me sign that note would be so that the examiners would look at the file and think it was a recourse note as opposed to a nonrecourse. I believe that was the whole point in having me sign a different note.

Mr. CHERTOFF. You also know that you're not the only person who had one of these transactions, one of these sales with the savings and loan where essentially Madison put up the money or lent the money to allow an insider to buy the property so that it would be moved off the books of Madison Financial and would appear to

be held in someone else's hands? You know there were others; is that right?

Mr. FITZHUGH. I know there were others but I don't know the details as far as whether they were recourse or nonrecourse. I know there were other sales.

Mr. CHERTOFF. You know Larry Kuca had a deal very similar to yours?

Mr. FITZHUGH. I believe his took place right before mine.

Mr. CHERTOFF. That was the same kind of deal you had with respect to the Levi Strauss building; is that correct?

Mr. FITZHUGH. I do not know if his is recourse or nonrecourse, but other than that, I believe it's pretty much the same deal.

Mr. CHERTOFF. Finally, Mr. Nash, I want to get to you and this conversation you had with Mr. Lindsey just this past Thanksgiving.

Mr. NASH. May I make a statement? I want to clarify something if I could. Someone said earlier that there were two telephone conversations. The second conversation I had with Mr. Lindsey was in person, in person at the White House when I was working there, not a telephone conversation.

Mr. CHERTOFF. OK, well, I didn't know that, so then in that case I want to make sure that we don't miss anything.

The CHAIRMAN. Let me ask Counsel to suspend because I think you're going to take some time and the little yellow light is on, so rather than to get into one of these things that my time is up, we'll go to Senator Sarbanes.

Senator SARBANES. Mr. Chairman, how long do you intend to continue with this panel?

The CHAIRMAN. I think probably another 10 minutes or so.

Senator SARBANES. Then what's the Chairman's intention?

The CHAIRMAN. Then I would like to get the other panel started before we take a short break, and I think we will take a break about 2:30 p.m.

Senator SARBANES. Why don't we break in between the panels?

The CHAIRMAN. Well, you know something, Senator?

Senator SARBANES. All right. We will do it your way, fine, fine.

The CHAIRMAN. Senator, you can't have it two ways. You can't at one time say we are dragging it out, we are not moving, and then at the other time, suggest that we do this. Now, we are going to keep pushing.

Senator SARBANES. Fine, then we will continue straight through.

The CHAIRMAN. Again let me say, I'm attempting to do the work of the Committee. I would note that we could move it much faster, we could have had some of our Members answer their questions, they may have gone another 2 or 3 minutes instead of having to come back and have them lay the groundwork again, but the Senator insists on certain rules and we are going to comply with them.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I yield our time.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Nash, this meeting at the White House, this second conversation with Mr. Lindsey, how did this start? He came to your office?

Mr. NASH. No, we were, I think, in a hall in the White House.

Mr. CHERTOFF. What did he say to you?

Mr. NASH. He said, do you remember my asking you a question about whether Clinton, Governor Clinton at that time, was in a meeting or visited with Jim McDougal in a trailer?

Mr. CHERTOFF. What did you say?

Mr. NASH. I said, yes, I remember you asking me that question.

Mr. CHERTOFF. What did he say?

Mr. NASH. He didn't say anything like OK.

Mr. CHERTOFF. OK?

Mr. NASH. Yes.

Mr. CHERTOFF. This occurred either right before or right after Thanksgiving?

Mr. NASH. I remember it was in that neighborhood, yes.

Mr. CHERTOFF. Do you know if it was after he had testified at a deposition here on November 21 of last year about this meeting?

Mr. NASH. I do not know whether it was before or after that.

Mr. CHERTOFF. Did you know that he said in the deposition that he didn't know whether his first call with you in 1993 had been at his instigation or at your instigation?

Mr. NASH. No, I do not know.

Mr. CHERTOFF. But what you do know is that that call in 1993 came from Mr. Lindsey?

Mr. NASH. Yes, I do.

Mr. CHERTOFF. It wasn't you calling Mr. Lindsey in 1993, about this meeting at the trailer, it was Mr. Lindsey calling you?

Mr. NASH. That's what I remember.

Mr. CHERTOFF. The reason this is important, and the reason it was brought up at the deposition last November, is because that naturally raises the question about—one of the questions—I don't want to be cagey with you. Obviously here is a meeting which you have described to us as pleasantries, and yet, for a meeting that, as we hear it from you, is the most casual kind of meeting, albeit a meeting that occurs after the people in the car have to find the trailer, there is a lot of attention being focused on it. In 1993, out of the blue—and to my knowledge, it didn't just appear in the press or anything—Mr. Lindsey calls you; and naturally the question would arise, why was it memorable enough to somebody to have Mr. Lindsey reach out for you and ask you about the meeting.

Now, we have established through your testimony, you have been firm on this, it is not that you remembered this and called Mr. Lindsey, it is that Mr. Lindsey had some reason to call you about it; and that's logical.

There were only four people who were in that meeting. There is the trooper, who actually didn't even come into the meeting. There is Mr. McDougal, who in 1993, as far as we know, is not a person who is in and out of the White House. There is you, and you didn't bring the subject up. And there is, of course, Mr. Clinton who was at the meeting. So the question would have arisen, maybe the secretary—but the secretary is not at the White House either—so naturally the question arises whether the President somehow had a memory of this meeting and directed Mr. Lindsey to find out what you remembered about it. Can you shed any light on that?

Mr. NASH. I have no idea. I do know that it was not an unusual occurrence for the Governor to stop—an unscheduled stop—at a

farmer's shed, a grocery store, a restaurant to stop and chat with people. That was a normal occurrence for him.

Mr. CHERTOFF. On the way?

Mr. NASH. Pardon?

Mr. CHERTOFF. While he was—

Mr. NASH. On the way or coming back.

Mr. CHERTOFF. But in this case, to be quite precise about this, this trailer wasn't on the highway. You all had to get off the road and specifically go to this trailer?

Mr. NASH. We did.

Mr. CHERTOFF. And so Mr. Lindsey gives a deposition about this, it comes up in the deposition, we see the note which apparently must have been his note of his 1993 conversation with you, which he evidently felt was important enough in 1993 to memorialize in a note. If you look at the subject matter of the rest of the note—we can put it up on the Elmo again. It is in the context of a whole series of notes regarding some interesting issues that he kind of is covering together involving the fundraiser, "Something BC set up with Jim McDougal." There is Betsey Wright's telephone number at the top. It says, "Whitewater to Webb, given to Webb 1½ boxes."

Then the next thing in order is he memorializes his 1993 conversation with you, that you were with Bill Clinton when he went to the trailer at 145th Street. And that's why it is so interesting that it comes up again after he is deposed last November.

I am trying to see if there is anything else we can plumb from your memory of what happened 2 months ago, when you saw Mr.—did he stop you in the hall?

Mr. NASH. We ran into each other in the hall. He must have stopped me, yes.

Mr. CHERTOFF. He said do you remember my asking you a couple of years ago about the meeting you had in the trailer with Governor Clinton and McDougal? That's what he said to you?

Mr. NASH. No, I have already stated what he said. You said something about a couple of years? I don't remember it being a couple of years.

Mr. CHERTOFF. Let's get it straight. In 1993 you had a conversation with Mr. Lindsey about this trailer meeting; right?

Mr. NASH. Yes.

Mr. CHERTOFF. Now a couple of months ago, in 1995, he brings it up again in the hall; right?

Mr. NASH. Yes.

Mr. CHERTOFF. He stops you.

Mr. NASH. I remember him stopping me, yes.

Mr. CHERTOFF. He says to you, what?

Mr. NASH. Do you remember my asking you whether you were at a meeting in a trailer where McDougal was and the Governor was; and I said, yes.

Mr. CHERTOFF. And then he says?

Mr. NASH. OK.

Mr. CHERTOFF. You don't say why, why are you asking me?

Mr. NASH. Mr. Chertoff, no, I had no need to ask at all.

Mr. CHERTOFF. Did he ask you anything about that, anything—again, here in 1995, in November, did he ask you again to give him an account of what had happened at that meeting in the trailer?

Mr. NASH. No.

Mr. CHERTOFF. He just wanted to know whether you remembered his having asked you about this in 1993?

Mr. NASH. Yes.

Mr. CHERTOFF. Mr. Fitzhugh, I just want to go back and address finally this issue about Castle Grande and IDC. There is no doubt in your mind that Castle Grande, what became that development, was a portion of the original tract that was purchased and then split between Madison Financial and Seth Ward; right?

Mr. FITZHUGH. That's always been my understanding.

Mr. CHERTOFF. So Castle Grande was a part of the IDC property; if that correct?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. I want to put up again, so we are clear on this, the check I showed that was made out to you that was your commission, so to speak, for the purchase by you of this Levi Strauss property which was north of 145th Street. Do you recognize this as the actual check that came for the purchase of property, the Levi Strauss building, north of 145th Street; right?

Mr. FITZHUGH. I recognize my signature on the back, yes.

Mr. CHERTOFF. You have no doubt that this is the check that represented this commission for your own purchase; right?

Mr. FITZHUGH. Well, all I can say is that's certainly my signature on the back.

Mr. CHERTOFF. Look, please, you are not going to dispute—

Mr. FITZHUGH. No, I am not. I have no reason to think it is not, none whatsoever.

Mr. CHERTOFF. It says, "Sale of building C, Castle Grande." When you got this check and you saw that, were you puzzled, did it seem to you—this is a check written November 1, 1985, right?

Mr. FITZHUGH. Well, I can't see the date, but that would be about right, yes, sir.

Mr. CHERTOFF. Did you say what's this about?

Mr. FITZHUGH. No, I knew what the check was for.

Mr. CHERTOFF. By the way, when we are talking about closing real estates transactions even at an institution like Madison Guaranty, there still is a requirement that people be—are pretty careful about what the checks are for. I mean, this is a \$50,000 check. It is important to know, for the record, that the check relates to a commission for a sale of a particular building. You had a particular interest in making sure that that was precise because it was money that was going to come to you and you were going to have to turn over for the downpayment; right?

Mr. FITZHUGH. That's correct.

Mr. CHERTOFF. You didn't raise a fuss or raise an objection to the characterization on that check for the Levi Strauss building north of 145th Street when it says, "Sale of building C, Castle Grande"?

Mr. FITZHUGH. No, I apparently didn't think that was significant.

Mr. CHERTOFF. You didn't have a problem identifying that?

Mr. FITZHUGH. No, sir.

Mr. CHERTOFF. I don't have anything more, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Did you even notice this item on this check that Mr. Chertoff's been asking about?

Mr. FITZHUGH. Well, I don't know, because it has been 11 years, if I noticed it or not. I certainly knew what the check was for. It could have said for sale of Levi Strauss building, sale of Castle Grande, sale of IDC property. It would have not really made any difference to me.

Senator SARBANES. Now, your understanding at the time—I was just reading your deposition—actually some of this seemed, to me, topical here because at one point a question was put to you. And you said, "I'm confused, too, I am not sure what you are asking me." Then the questioner said, "I forget my question at this point."

In your deposition, you stated that this was the IDC property, that's how you understood it; right? In fact, I think you said, "I don't think Castle Grande existed when Madison purchased IDC?"

Mr. FITZHUGH. That's my belief, yes, sir.

Senator SARBANES. Then Castle Grande was a portion of the IDC property; is that correct?

Mr. FITZHUGH. That's correct.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Just a couple of things, Mr. Fitzhugh.

First, when Mr. Chertoff said that the document was typed in the Rose office, the September 24th backdated document, I think we ought to be clear about what the source of that information is so that there will be no misunderstanding. It is my understanding that information comes from Mr. Hubbell's former secretary who said she identified the similarity in the typeface between the type in that document and what she used on her typewriter at the Rose Law Firm. This is Mr. Hubbell's secretary. And of course, you would have no reason to have seen that document, as I believe you have testified; is that correct?

Mr. FITZHUGH. That's correct.

Mr. BEN-VENISTE. Second, there was an assumption in the question that was put to you that Mr. McDougal went to Mrs. Clinton to type the option agreement that was prepared in May 1986. I take it you have no personal knowledge of that agreement or its purposes or how it was prepared?

Mr. FITZHUGH. No, sir, I have no knowledge.

Mr. BEN-VENISTE. And you have no knowledge, I take it, about who drafted it?

Mr. FITZHUGH. No, sir.

Mr. BEN-VENISTE. But I would like to clarify the record, and this addresses to some extent the Senator from Alaska's point, with respect to the conclusions of the Pillsbury Report.

I quote from the December 28, 1995 report at page 77, which said, "The only solid evidence tying the Rose Law Firm to this acquisition is evidence of the innocent activity of participating in the drafting of the purchase agreement. While some evidence suggests that Hubbell could have had a role in the drafting of the September 24, 1985 letter between McDougal and Ward"—and I think that's what Mr. Chertoff was referring to earlier—"nothing proves he did, much less that he did so knowing it to be wrong. Similarly, while Mrs. Clinton seems to have had some role in drafting the May 1, 1986 option"—now this is the conclusion that is reached by Pillsbury Madison & Sutro prior to the discovery of the billing records.

They are assuming in their conclusion that Mrs. Clinton played a role in drafting the option agreement because the document itself has a computer key to it that leads to Mrs. Clinton's then-secretary at the time. So they drew the conclusion or the inference that Mrs. Clinton had a role in the preparation of the option agreement. But they say, similarly, "While Mrs. Clinton seems to have had some role in drafting the May 1, 1986 option, nothing proves she did so knowing it to be wrong, and the theories that tie this option to wrongdoing or to the straw-man arrangements are strained at best." So this is the Pillsbury Report, and again, you have no reason to conclude that their conclusion is erroneous?

Mr. FITZHUGH. No, sir, I have—

Mr. BEN-VENISTE. You simply have no personal knowledge about this matter at all?

Mr. FITZHUGH. None.

Mr. BEN-VENISTE. Nothing further.

The CHAIRMAN. Mr. Nash, let me ask you something that troubles me. You have this casual drop-in, it is not unusual for the Governor to drop-in to see constituents at a store, whatever. As you describe it, you don't know who, but you didn't suggest a drop-in at McDougal's trailer; indeed, you didn't even know that he had a trailer there; right?

Mr. NASH. I don't remember suggesting it, Senator.

The CHAIRMAN. Mr. Nash, now wait, I understand you can't have total recall, but we have been over this thing a number of times now. You didn't even know McDougal had a trailer there at that point in time?

Mr. NASH. I knew that there was Maple Creek Farms out in that direction—

The CHAIRMAN. Yes, but you didn't know he had a trailer there?

Mr. NASH. No, sir—

The CHAIRMAN. You didn't know he was there?

Mr. NASH. No, sir, I didn't.

The CHAIRMAN. And it wasn't your suggestion?

Mr. NASH. I don't remember it being my suggestion.

The CHAIRMAN. Well, you never met Mr. McDougal, you didn't know him, did you? You testified before you didn't know him. Now don't attempt to say to us that maybe you suggested that you stopped there?

Mr. NASH. I did not say that I never met Mr. McDougal. I don't remember saying I'd never met him.

The CHAIRMAN. Are you saying there is a possibility that you may have suggested that we stop to see Jim McDougal?

Mr. NASH. No, sir. I have on occasion suggested that we stop at different places while we were on trips, which is why I am saying that I do not remember whether I did or not. I would also note Mr. McDougal—

The CHAIRMAN. You are now saying you may have suggested that we stop to see Jim McDougal?

Mr. NASH. No, sir.

The CHAIRMAN. Did you suggest that you stop to see McDougal? Pardon me?

Mr. NASH. Mr. Chairman, I do not remember suggesting we stop.

The CHAIRMAN. If you had suggested that stop, wouldn't you remember?

Mr. NASH. Well, it has been quite a few years ago, Senator, and I may or may not have.

The CHAIRMAN. OK. So you stopped to see Mr. McDougal and you describe the manner in which you and the Governor go in, and you are talking to him and it was totally casual; is that true?

Mr. NASH. Yes, sir.

The CHAIRMAN. No business?

Mr. NASH. No, sir.

The CHAIRMAN. No business about the Levi Strauss warehouse or factory?

Mr. NASH. No, sir.

The CHAIRMAN. Nobody talks about that?

Mr. NASH. Pardon?

The CHAIRMAN. No one talks about that?

Mr. NASH. No, sir—at this meeting you are referring to?

The CHAIRMAN. Yes.

Mr. NASH. No, sir.

The CHAIRMAN. But at some point, you mention in your deposition, Levi Strauss factory, and then thereafter, and you go on a little bit and you say, well, it was really Levi 501 pants that we were talking about.

Now, you see that chart up there?

Mr. NASH. Yes, sir.

The CHAIRMAN. Yes. I think it's the red one, Mr. Fitzhugh. The red one, was that the Levi Strauss building?

Mr. FITZHUGH. Yes, sir, that's it.

The CHAIRMAN. That was the Levi Strauss warehouse?

Mr. FITZHUGH. The warehouse, not the factory.

The CHAIRMAN. When was this?

Mr. FITZHUGH. 1985.

The CHAIRMAN. You had just purchased this facility—right?

Mr. FITZHUGH. October 1985.

The CHAIRMAN. From Mr. McDougal, from the bank?

Mr. FITZHUGH. Correct.

The CHAIRMAN. Mr. McDougal, he ran it?

Mr. FITZHUGH. Yes, sir.

The CHAIRMAN. I mean, he ran everything, he was the loan committee, wasn't he?

Mr. FITZHUGH. Well, I—I mean——

The CHAIRMAN. As a practical matter, who ran this place?

Mr. FITZHUGH. I believe Mr. McDougal did.

The CHAIRMAN. He made all the decisions? He was the boss?

Mr. FITZHUGH. Yes, sir.

The CHAIRMAN. Who could give you a 10 percent commission on a phony deal like that? I mean, he is the guy that did it? No board of directors approved that?

Mr. FITZHUGH. No.

The CHAIRMAN. It was the same time he came to you and said, hey, this is what we are going to do; and the same day you did it, didn't you?

Mr. FITZHUGH. Within a day or so, yes.

The CHAIRMAN. He was the boss. That is the factory, now where is the trailer? The trailer—it is the Levi Strauss warehouse, let's get it, this is the warehouse. Now where is the trailer? It is in pretty close proximity to that, isn't it? Do you remember where the trailer was, Mr. Fitzhugh?

Mr. FITZHUGH. Well, I can't say it is directly across the street from number one, but it is somewhere right along—

The CHAIRMAN. Right in the neighborhood?

Mr. FITZHUGH. Yes.

The CHAIRMAN. Now, Mr. Nash, you heard of the transaction that Mr. Fitzhugh had entered into, you have no reason of knowing it back then. Mr. Fitzhugh didn't tell you he had just bought the Levi Strauss facility, did he? Did you know Mr. Fitzhugh then?

Mr. NASH. No, sir.

The CHAIRMAN. So, he didn't tell you about this, did he?

Mr. NASH. He didn't tell me about what, Senator?

The CHAIRMAN. He didn't tell you that there was a sale that was consummated with respect to Levi Strauss?

Mr. NASH. No, sir.

The CHAIRMAN. No, no. Isn't it strange that right at about the same time that he buys this property, you decide to make a call—not you, the Governor, on Mr. McDougal and the subject of Levi comes up. Now, you see what's tough. It is tough to believe that the Governor would go and you had to find it, it wasn't right there, that trailer, you had to take some time to find it, to do a drop-in, and guess what we discussed? Not the Levi Strauss warehouse which Mr. McDougal had just parked with Mr. Fitzhugh, no. We discussed Levi pants, 501 pants.

Mr. Nash, it is not reasonable. Let me tell you why it is not reasonable to believe it. Because 8 years later, Mr. Lindsey calls you. This meeting is on his mind. He has notes written down. You really expect us to believe that you discussed with the Governor and Mr. McDougal the fact that he wore Levi 501 pants as opposed to discussing the Levi Strauss warehouse? Which he was involved in, up to his ear, and over? I mean—and he just called you.

Now let's go to the phone call. You remember the phone call?

Mr. NASH. Yes, sir.

The CHAIRMAN. He called you; right?

Mr. NASH. I remember him calling me.

The CHAIRMAN. So Bruce Lindsey called you in 1993, and what did he say?

Mr. NASH. He said, do I remember being in a trailer, McDougal's trailer, when the Governor was there and I was there. And I said, yes, I do remember that.

The CHAIRMAN. Then what else did he ask you?

Mr. NASH. He didn't ask me anything else.

The CHAIRMAN. He didn't ask you what you discussed?

Mr. NASH. No, sir.

The CHAIRMAN. He didn't ask you who was there?

Mr. NASH. No, sir.

The CHAIRMAN. He didn't ask you about anything else, he just said to you—what's your first name?

Mr. NASH. Bob, Bobby.

The CHAIRMAN. Bobby. He calls you Bobby?

Mr. NASH. Well, my name—they call me Bob.

The CHAIRMAN. All right, you obviously know Mr. Lindsey, and he calls you up in 1993 and he says to you, Bob, do you remember stopping at a trailer to see Jim McDougal with the Governor in 1985 or thereabouts, and you said, yes. Then he didn't ask you anything else? He didn't ask you who was there? He didn't ask you what you discussed? He didn't ask you anything? Are we supposed to believe that?

Mr. NASH. Pardon?

The CHAIRMAN. Are we supposed to believe that?

Mr. NASH. That is what happened, Senator.

The CHAIRMAN. OK. But you do understand why we have difficulty—Mr. Lindsey, he is an important man. He just out of the blue—did he tell you why he called you to find out?

Mr. NASH. No, sir.

The CHAIRMAN. Then 2 years later, 2 years later, he just stops you in the hall on or about Thanksgiving, just so happens he is testifying before this Committee by way of deposition. His notes have been turned over, the note which indicates that he called you. Would it be so maybe you would not say that it was with respect to the Levi factory or warehouse or facility that Mr. McDougal was involved in, and that the Governor was speaking to him, or that Mr. McDougal was speaking to him about that? And then you concoct this thing, as it relates to a pair of Levi pants.

Why would he be interested if you had a meeting to discuss a pair of Levi pants? You see, it doesn't make sense. He would be interested, though, if it was a meeting where the subject of the Levi Strauss facility which Mr. Fitzhugh had purchased had come up. That's what I think, Mr. Nash. As it relates to your testimony and deposition, the inconsistencies in it where you first talk about a Levi factory and, yes, it is a warehouse, we know the factory, you can't see it, as opposed to your finally settling on a recollection that it was about Levi pants. I suggest I have some difficulty with that.

Mr. NASH. My deposition indicates that, in the interchange with the person doing the deposition, that we did talk about it was a certain type of blue jeans, but the meeting was not about blue jeans, it was a casual drop-by.

The CHAIRMAN. Yes, I understand that. But I say I believe that your initial getting into it with respect to the Levi factory is probably a more accurate account. But that's at least what I think most reasonable people would have to conclude. I think it is absolutely absurd to suggest that the President's assistant would be concerned about a meeting, a casual drop-by, where the subject was Levi pants as opposed to the Levi facility. Isn't it an incredible coincidence? What a coincidence. The Levi jeans and the Levi factory. It is quite inventive, creative.

Senator Sarbanes.

Senator SARBANES. Well, Mr. Nash, I think we ought to, for your sake, address this assertion just here at the end by the Chairman, that it was quite creative. I don't think that's fair to you, frankly, since the distinction you made was made at your deposition. It is not as though it is a distinction you came up with here today before the Committee.

As I read your deposition, earlier, apparently there had been some confusion. You said I remember a discussion about blue jeans because there is a blue jean factory close. But then later, in the same deposition, you then said, the question was, "Just you have a vague recollection it had to do with this blue jeans plant?" And your answer, "Yes, it had do with blue jeans, not the blue jeans plant." That's what you said at your deposition; right?

Mr. NASH. I remember that, yes, sir.

Senator SARBANES. All right. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Fitzhugh, at—

Senator SARBANES. Actually, I don't see why it matters all that much. They could have had discussions about the employment at the Levi Strauss blue jean factory, about whether people were being laid off or being hired on, or anything else of that sort. So I don't really see where the questioning takes you, even if there had been discussions about blue jean factories. But I think for your sake, here before the Committee, it is important to point out this deposition testimony, in lieu of that last comment, and that's why I wanted to underscore it.

Mr. BEN-VENISTE. Whether there was a conversation about the blue jeans that Mr. McDougal was wearing or the factory that was nearby, is there any suggestion, Mr. Fitzhugh, that the Governor of Arkansas was somehow involved in or concerned about the purchase of the Levi warehouse?

Mr. FITZHUGH. I have no indication of that whatsoever.

Mr. BEN-VENISTE. Have you ever read anywhere or heard any assertion that somehow the Governor of Arkansas inserted himself into this transaction, or was interested in some way in it?

Mr. FITZHUGH. Today is the first time there has been any vague insinuation about that that I have ever heard of.

Mr. BEN-VENISTE. And in terms of any connection between these two events, I will put to Mr. Nash, whether in fact the interest in a meeting in a trailer was not the interest spurred by Mr. Hale, who claimed that he had a meeting with Governor Clinton and Mr. McDougal in a trailer. That's why this whole matter was gone into. And that's why Mr. Gerth was questioning Mr. Lindsey, and Mr. Lindsey was asking you. It had nothing to do with the blue jeans plant or warehouse, or any other such thing.

Mr. NASH. I am not aware of—I have stated already the reasons that we were talking about blue jeans is because I thought he had on, I remember him having on 501 blue jeans.

Mr. BEN-VENISTE. But in terms of the interest in the meeting, according to Mr. Lindsey's interest in a meeting in a trailer, that was because Mr. Gerth had gotten this allegation from Mr. Hale, who was on the verge of being prosecuted in Little Rock, who claimed to have had a meeting in a trailer with Governor Clinton. That's what all this is about, not whether Mr. Clinton was interested in participating somehow in the transaction involving the sale of this warehouse. I have nothing further to add to this.

Senator SARBANES. Mr. Hale wasn't at that meeting, was he, Mr. Nash?

Mr. NASH. No, sir, Mr. Hale was not at that meeting.

Senator SARBANES. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Just a couple of minutes, Mr. Fitzhugh, in relation to the last set of questions you were asked by Mr. Ben-Veniste. You have already acknowledged to us when I asked you questions about the option and why Mrs. Clinton was the one who drafted the option that perhaps that was something Mr. McDougal didn't want you to know about, he wanted to take it outside the bank. I take it Mr. McDougal kept a lot of things close to the vest, at least as far as you were able to see; right?

Mr. FITZHUGH. I've found that out since I have left that savings and loan, yes, that's correct.

Mr. CHERTOFF. So you don't want to put yourself in the position here of vouching one way or the other as to what Mr. McDougal had going with Governor Clinton because you don't really know?

Mr. FITZHUGH. I have absolutely no idea.

Mr. CHERTOFF. You didn't know, for example, about Whitewater?

Mr. FITZHUGH. No.

Mr. CHERTOFF. Mr. Nash, let me ask you, in fairness to you, I want to see if you will agree with me on this point. In your mind, at the time you went to this meeting with the Governor and Mr. McDougal, you didn't know anything about IDC or the Levi Strauss buildings, or any of that stuff; right?

Mr. NASH. That's correct.

Mr. CHERTOFF. You didn't even know about Whitewater?

Mr. NASH. No, I did not.

Mr. CHERTOFF. So, I mean, from your position as a bystander, someone who is literally coming along for the ride on this, it is fair to say that this particular meeting did not assume any great significance in your mind?

Mr. NASH. "Any great significance"?

Mr. CHERTOFF. Yes, this event was not something that was memorable to you or a significant event, this meeting with McDougal and the Governor, back in 1985, 1986?

Mr. NASH. Yes, it's significant in that it was the first time I had visited this trailer or an office where Jim McDougal was.

Mr. CHERTOFF. Oh, that was significant to you?

Mr. NASH. Yes, that was the first time I had done that.

Mr. CHERTOFF. Are you telling us now that in 1986, when you went to this trailer, it had some significance to you? You made note of it?

Mr. NASH. I didn't make note of it. My point was it is significant that it was the first time I had visited Jim McDougal's office in this trailer.

Mr. CHERTOFF. Had you been at that office in the trailer any other times afterwards?

Mr. NASH. No.

Mr. CHERTOFF. So it is the only time you were there?

Mr. NASH. That's correct.

Mr. CHERTOFF. And in your mind, the conversation in 1986, to the best of your recollection, is, as you've described it, casual; right?

Mr. NASH. Yes, sir.

Mr. CHERTOFF. But it was significant enough, this event, this meeting, the fact that you and the Governor were together with Mr. McDougal, it was significant enough in someone's mind to lead to Mr. Lindsey calling you about it in 1993; right?

Mr. NASH. Oh, I wouldn't know about anybody else's mind.

Mr. CHERTOFF. OK. So all we can do is we will ask you for your knowledge of your own mind, but you will agree with me, that in terms of why Mr. Lindsey chose to call you in 1993, why he chose to write a memo down about what you told him about the visit, and why he felt it was again necessary to talk to you about it in 1995, those are matters that you could only speculate about?

Mr. NASH. I am not sure I understand the question, Mr. Chertoff.

Mr. CHERTOFF. Let me make it even more simple. In 1993, it was Bruce Lindsey who felt there was some reason he had to reach out for you to ask you about this trailer meeting; right?

Mr. NASH. He called me in 1993 to ask me was I at the meeting.

Mr. CHERTOFF. It was Mr. Lindsey who made the decision that your answer to that was important enough to write down in his notes; right?

Mr. NASH. I don't know that, Mr. Chertoff.

Mr. CHERTOFF. Well, you saw the notes. You have no reason to doubt that it is Mr. Lindsey's handwriting, do you?

Mr. NASH. I am not sure I would recognize his handwriting.

Mr. CHERTOFF. I will represent to you Mr. Lindsey produced them and identified them as his handwriting. And again, in 1995, it was Mr. Lindsey who came to you and approached you about this issue of this meeting in the trailer; right?

Mr. NASH. It was Mr. Lindsey, yes.

Mr. CHERTOFF. And whatever significance you attribute to this in your own mind, you don't really know the significance it had in Mr. Lindsey's mind or whoever asked Mr. Lindsey to reach out for you on any of these occasions; right?

Mr. NASH. No, sir, I do not.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sarbanes.

Senator SARBANES. I observed when Mr. Lindsey was here, he testified those notes were made in the course of responding to and preparing for press inquiries about the allegations that Hale was making, and he went through a process of trying to, as it were, run down the various Hale allegations about Governor Clinton.

The CHAIRMAN. The Senator makes a very valid observation, but I would also indicate that, certainly in 1995, there was reason to question why Mr. Lindsey would once again, it seems to me, approach Mr. Nash.

We have exhausted the various aspects and I want to thank the witnesses for being here. As a matter of fact, I'm sorry that we did not offer to accommodate you with some kind of a small break. We will adjourn until 3 p.m., at which time we will see if we can't finish the witnesses as expeditiously as possible.

Senator SARBANES. Mr. Chairman, I thought you indicated we were going to go straight through.

The CHAIRMAN. I think there are a lot of people here, including the Chairman, who want to take a break.

We stand in recess until 3 p.m.

[Whereupon, the hearing was recessed, to be reconvened at 3 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. Starting with Mr. Dover, then Mr. Donovan, and Mr. Thrash, do you have any statement you would like to make or give to the Committee?

SWORN TESTIMONY OF DARRELL D. DOVER
ATTORNEY, HOUSE, WALLACE, NELSON & JEWELL
LITTLE ROCK, ARKANSAS
REPRESENTED INDUSTRIAL DEVELOPMENT COMPANY [IDC]

Mr. DOVER. No, Mr. Chairman.

SWORN TESTIMONY OF RICHARD T. DONOVAN
ATTORNEY, ROSE LAW FIRM, LITTLE ROCK, ARKANSAS

Mr. DONOVAN. No, Mr. Chairman.

SWORN TESTIMONY OF THOMAS P. THRASH
ATTORNEY, ROSE LAW FIRM, LITTLE ROCK, ARKANSAS

Mr. THRASH. No, sir.

The CHAIRMAN. All right. Counselor.

Mr. GIUFFRA. Good afternoon.

Mr. Thrash, in 1985 and 1986, you performed some legal services for Madison Guaranty; correct?

Mr. THRASH. Yes, sir, that's correct.

Mr. GIUFFRA. At that time you had just become a partner at the Rose Law Firm?

Mr. THRASH. I had become a partner in February 1985, yes, sir.

Mr. GIUFFRA. Mr. Donovan, you performed some legal services for Madison Guaranty in 1985 and 1986; am I correct?

Mr. DONOVAN. Yes, sir.

Mr. GIUFFRA. You were a young associate at that time?

Mr. DONOVAN. Yes, sir.

Mr. GIUFFRA. If we could just put up on the Elmo the Williams to Foster memo. Now, Mr. Thrash, do you know approximately the extent of Rose's billing to Madison in 1985 and 1986?

Mr. THRASH. No, sir.

Mr. GIUFFRA. Mr. Donovan, do you know?

Mr. DONOVAN. No, I don't.

Mr. GIUFFRA. This is a memorandum from Mr. David Williams to Mr. Vincent Foster, Jr., dated November 20, 1986, and the "re" is FSLIC Representation, and the memorandum concerns certain representations that the firm had to decline in order to represent FSLIC. On page 3, if I could just read it into the record, it says, "Due to our representation of FSLIC, we have withdrawn from representation of Madison, which had been a previous client of ours generating estimated annual fees to the firm of approximately \$40,000." Do you know anything about that, Mr. Thrash?

Mr. THRASH. About the number?

Mr. GIUFFRA. Yes, do you know whether that's accurate?

Mr. THRASH. No, sir, I don't know.

Mr. GIUFFRA. Mr. Donovan, do you know if that's accurate?

Mr. DONOVAN. I do not.

Mr. GIUFFRA. Mr. Thrash, you were involved in the actual transaction involving the sale of that real estate parcel that's displayed on the map, the 145th Street real estate parcel, or the IDC project?

Mr. THRASH. I had limited involvement in a transaction involving the IDC and Madison Guaranty and Madison Financial, yes, sir.

Mr. GIUFFRA. Do you have any recollection, other than from looking at records, of the extent of your work on that project?

Mr. THRASH. I do not, Mr. Giuffra, I do not.

Mr. GIUFFRA. Now in regard to recording time, you try to be very accurate; am I right?

Mr. THRASH. Yes.

Mr. GIUFFRA. The firm might have some sort of legal liability if you were inaccurate in recording your time?

Mr. THRASH. I try to record my time accurately, Mr. Giuffra.

Mr. GIUFFRA. Mr. Donovan, you also try to record your time accurately?

Mr. DONOVAN. Yes, I do.

Mr. GIUFFRA. With regard to the IDC matter, would you agree, Mr. Thrash, that the Rose Law Firm billing records are the best evidence of the extent of Rose's work on that matter?

Mr. THRASH. Yes, sir, I do.

Mr. GIUFFRA. Mr. Donovan, would you agree that the Rose Law Firm billing records are the best evidence of the extent of Rose's work on the IDC matter?

Mr. DONOVAN. Yes, I would agree with that.

Mr. GIUFFRA. Mr. Thrash, am I right that the Rose Law Firm has been looking for the billing records that were found at the White House on January 4, 1996, for approximately 2 years?

Mr. THRASH. Mr. Giuffra, I am really not certain about that. Mr. Ron Clark, our Chief Operating Officer, would know more about that than I.

Mr. GIUFFRA. OK. These records indicate that Rose represented Madison on the IDC transaction. Do you know whether the Rose Firm represented Mr. Ward in connection with that transaction?

Mr. THRASH. No, sir, I do not believe we did.

Mr. GIUFFRA. Do you know whether any other firm was involved in representing Madison in connection with the IDC transaction?

Mr. THRASH. You are referring to the acquisition of the IDC property by Madison?

Mr. GIUFFRA. Correct.

Mr. THRASH. No, sir, I think—

Mr. GIUFFRA. That was strictly handled by the Rose Law Firm on behalf of Madison?

Mr. THRASH. Yes, I believe I was the attorney, along with Dave Thomas, that may have worked on that.

Mr. GIUFFRA. If we could put up on the Elmo the Rose Law Firm billing record 29011.

The CHAIRMAN. I think you should have it in your packet. It will be easier for you.

Mr. GIUFFRA. We will be asking a number of questions from the billing records and you can get the identifications down in the lower right-hand corner. The page number is 29011.

The CHAIRMAN. We have some additional copies here. Counsel, why don't you take these and we will save some time. Bob, will you be asking Mr. Donovan any questions with respect to this?

Mr. GIUFFRA. Yes, I will.

The CHAIRMAN. So why don't we see that Mr. Donovan has a copy as well. No, that's Mr. Dover, OK, good, and Mr. Donovan.

Mr. GIUFFRA. Mr. Thrash, am I correct that this sort of a billing memorandum would set forth the extent of the Rose Firm's work for a particular client, the amount of time billed by each lawyer?

Mr. THRASH. This is a computer-generated report that would reflect the amount of time that was entered by a certain date into our computer system.

Mr. GIUFFRA. Now, I would observe that, with regard to the IDC matter, the Committee has identified bills for September 29, 1985 and October 30, 1985, but we have not been able to locate the billing memoranda for those bills. Normally, is there a billing memorandum that would go with a bill?

Mr. THRASH. Something similar to what you are showing me here?

Mr. GIUFFRA. No, an invoice, similar to the document that bears Bates number 29010, let's focus on that one.

Mr. THRASH. Mr. Giuffra, 29010 is an invoice that would go to a client.

Mr. GIUFFRA. Then normally, in preparing the invoice that goes to the client, you rely on the billing memorandum; correct?

Mr. THRASH. That is correct, in most situations, that's correct.

Mr. GIUFFRA. Let's put the billing memorandum back on, which is 29011. This billing memorandum indicates that Mrs. Clinton, between December 6, 1985 and December 24, 1985, had seven phone calls with Seth Ward. Mr. Thrash, do you know Seth Ward?

Mr. THRASH. Yes, I know who he is.

Mr. GIUFFRA. Who is Seth Ward?

Mr. THRASH. Seth Ward was the father-in-law of Webster Hubbell. He was also a representative of Madison Financial Corporation, I believe, or an employee.

Mr. GIUFFRA. In connection with this IDC transaction?

Mr. THRASH. Yes, that's correct.

Mr. GIUFFRA. Do you have any idea as to why Mrs. Clinton was speaking to Mr. Ward?

Mr. THRASH. No, sir, I do not. My involvement would have ceased approximately on October 8th, I believe, or October 7th, somewhere in there.

Mr. GIUFFRA. Mr. Donovan, do you have any idea why Mrs. Clinton was having telephone conferences with Mr. Ward?

Mr. DONOVAN. Yes, I don't know, but—

Mr. GIUFFRA. Also billing for that time?

Mr. DONOVAN. I don't know, but it appears the most likely reason was that she was talking with Mr. Ward about the possibility of constructing a brewery on the IDC property because it leads up to my research on that issue, which began, as I see from the billing memo, on 12/30/85.

Mr. GIUFFRA. Mr. Dover, if I could call your attention, there is a phone call at 12/6/85, for a little less than a third of an hour, involving yourself, and then there is another call on the 10th for about a half-hour, and there is a conference with D. Dover. Do you know why you might have been speaking to Mrs. Clinton on 12/6 or 12/10/1985?

Mr. DOVER. No, I don't. The transaction closed, I believe, on October 4th or 5th of that year.

Mr. GIUFFRA. Do you recall that those calls covered anything to do with a brewery?

Mr. DOVER. Oh, no, I don't think so. Frankly, I don't ever remember talking with Mrs. Clinton on this transaction. I talked with Mr. Thrash a number of times, but I really don't recall talking to Mrs. Clinton.

Mr. GIUFFRA. But you have no reason to dispute the accuracy of these billing records?

Mr. DOVER. Except that I don't recall it.

Mr. GIUFFRA. Mr. Donovan, you can't be absolutely certain as to why Mrs. Clinton was speaking to Mr. Ward because you weren't on the telephone calls?

Mr. DONOVAN. That's correct.

Mr. GIUFFRA. Mr. Thrash, there is a time summary entry on the bottom of the bill, and there is an entry where it says, "amount to bill," and Mrs. Clinton's amount to bill is \$2,700—\$2,731.25. Do you see that?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. The standard value which is based on her hourly rate at 7.30 hours comes out to \$912 and the increase is exactly \$1,118.75, which is triple.

Now, Mr. Clark testified, when he was here, your managing partner, he thought this might reflect additional work that Mrs. Clinton had done on this matter. Would that be your best estimate as to what this additional time would reflect?

Mr. THRASH. Yes, sir, that would be consistent with the billing memorandum that you have here and the timing of it. At this point in time, this is a January 21st billing memorandum, at this point in time, our year end, our fiscal year end is January 31st. We try to get all our bills out by that time and get them paid. And we are trying to get all our time in.

A lot of times we will put time down and it will not be in the computer and we will try to get that out, and put in it a bill. Once you put it in a bill, you wouldn't want to go back and put it on the computer because then you would have two time entries, and you would have billed for it twice. So this might be time she had that had not gotten into the billing memorandum yet.

Mr. GIUFFRA. Now the simple math would be that Mrs. Clinton appears to have billed for approximately 14.5 hours at her rate of \$125 and that gets you to \$1,818. So there would be an additional 14 hours in addition to the 7.30 hours for a total of approximately 21½, 22 hours of work on this January bill. Does that seem correct to you, sir?

Mr. THRASH. I haven't done your math, but I wouldn't dispute it.

Mr. GIUFFRA. If we could put up the summary chart we prepared for the January 30, 1986 IDC bill on the Elmo. Now this summary chart reflects, going across the top, Mrs. Clinton's time at standard value which would be 7.3 hours at \$125 an hour gets you to \$912.50. Then this additional \$1,818 gets you another 14 hours for a total of approximately 22 hours. And then Mr. Clark testified that the September and October bills were folded into the January bill to get a total of \$4,651 which was the amount of the actual bill.

If we could put up on the Elmo the next chart which we prepared and it is a summary of Mrs. Clinton's IDC billings. What we have done here is we have added up Mrs. Clinton's time for the IDC matter. We have included, across the right-hand side, it says, "account billed." There are a number of instances in which Mrs. Clinton billed for telephone calls with Mr. Ward, and billed the time to either the general account, the stock offering account, or the limited partnership account—IDC partnership account.

For example, on May 1, 1986, Mrs. Clinton billed 2 hours, and her billing entries reflect work on an option agreement and a teleconference with Mr. Ward. And we now know that that option agreement had to do with IDC.

Now in terms of the actual time that Mrs. Clinton had worked on this matter, in terms of hours that we can account for, we have identified 15 hours, for which she billed \$1,956. Then there is this unknown category of 14.5 hours for which Mrs. Clinton billed \$1,818.75. Do you see that? For a total of 29.5 hours of work by Mrs. Clinton related to IDC?

Mr. THRASH. Mr. Giuffra, which document are you referring to? Yes, sir, I see that.

Mr. GIUFFRA. You don't know the nature of the work that Mrs. Clinton performed for this 14.5 hours; right?

Mr. THRASH. No, sir, I do not.

Mr. GIUFFRA. You don't know when she might have billed that time, other than to guess it might have happened sometime prior to the end of your fiscal year in January 1986?

Mr. THRASH. That is correct.

Mr. GIUFFRA. If we could put the next chart on the Elmo. Do you have this it is entitled, "Rose Law Firm IDC Billings"?

Mr. THRASH. Yes, sir, I have it.

Mr. GIUFFRA. Mr. Thrash, is it your understanding that you billed approximately 12.4 hours to the IDC matter?

Senator SARBANES. Could I ask whose document this is?

Mr. GIUFFRA. This is something, Senator, we prepared based on documents that we've received.

Senator SARBANES. It is a document prepared by Majority staff?

Mr. GIUFFRA. Yes.

Senator SARBANES. OK.

Mr. GIUFFRA. Mr. Thrash, you billed 12.4 hours on IDC; is that your best estimate?

Mr. THRASH. That is correct.

Mr. GIUFFRA. Mr. Donovan, you billed 22.7 hours, is that your best estimate?

Mr. DONOVAN. Yes, sir.

Mr. GIUFFRA. Your billing rate in 1986 was what, \$65 an hour?

Mr. DONOVAN. Sounds right.

Mr. GIUFFRA. So the total amount that would have been billed to you would have been \$1,475.50; is that right?

Mr. DONOVAN. That sounds correct.

Mr. GIUFFRA. Mr. Thrash, what was your billing rate in 1985?

Mr. THRASH. Mr. Giuffra, I don't recall.

Mr. GIUFFRA. Approximately \$90 an hour?

Mr. THRASH. If you have taken that from the documents, I would not dispute that, but I don't recall.

Mr. GIUFFRA. This document indicates that Mrs. Clinton billed 29.5 hours and that she was responsible for more than 50 percent of the total Rose billings with respect to the IDC matter. Mr. Thrash, do you have any reason to dispute that calculation?

Mr. THRASH. When you are referring to the 52 percent, you are referring to the dollar amount, not the hours worked; correct?

Mr. GIUFFRA. You have no reason to dispute the figures that we have compiled from the firm's billing records which are reflected in this document?

Mr. THRASH. I haven't check it. I know my hours are correct on here.

Mr. GIUFFRA. Mr. Donovan, are your hours correct as well?

Mr. DONOVAN. That's correct.

Mr. GIUFFRA. You joined Rose as an associate in 1983, and you became a partner in 1989; correct?

Mr. DONOVAN. That's right.

Mr. GIUFFRA. In 1985 and 1986, you were the only associate in the litigation department?

Mr. DONOVAN. I think that's right.

Mr. GIUFFRA. Mr. Donovan, you were often asked to do discreet research projects?

Mr. DONOVAN. Correct.

Mr. GIUFFRA. In 1985 and 1986, you did some discreet research for Mrs. Clinton related to Madison?

Mr. DONOVAN. I did.

Mr. GIUFFRA. Did you have any recollection of this research until you saw the actual memos that you had prepared?

Mr. DONOVAN. No, I did not.

Mr. GIUFFRA. Is it normally the case in your experience that an associate will bill far more time in preparing a legal research memorandum than the partner on the matter?

Mr. DONOVAN. No, not necessarily. I don't think that's a general statement that I would agree with.

Mr. GIUFFRA. Excuse me?

Mr. DONOVAN. No, I don't agree with that.

Mr. GIUFFRA. So you would say sometimes the partner will spend more time than the associate with regard to the preparation of the legal memorandum?

Mr. DONOVAN. No, I am saying with regard to a matter, particularly when an associate is doing discreet research, it is not unusual for the partner to have the contact with the client, speaking with the client about what the associate—

Mr. GIUFFRA. Just in terms of preparing the legal memorandum that you would send to the client, normally the associate would do the bulk of the work; isn't that right?

Mr. DONOVAN. That's probably a fair statement.

Mr. GIUFFRA. And the partner will spend less time, just sort of reviewing the memo and making sure it is up to snuff?

Mr. DONOVAN. Maybe.

Mr. GIUFFRA. If we could put up Mrs. Clinton's Supplemental Interrogatory by the RTC. This will be her answer to number 64. Let's focus on pages 12 and 13 of the interrogatories. The question had to do with Madison Guaranty matter No. 5, and the interrogator asks Mrs. Clinton to "Describe the work you performed with re-

spect to Madison Guaranty matter No. 5." Mr. Thrash, matter No. 5 was the IDC project; right?

Mr. THRASH. Yes, that's correct.

Mr. GIUFFRA. Mrs. Clinton in her interrogatory states in part: "I believe that the work I did on this matter consisted primarily of supervising research concerning legal issues, such as whether it would be legal to open a tasting room for a proposed brewery, in light of the fact that the land was, arguably, located in what had once been a 'dry' township, and other questions relating to the provision of water and sewer service by a utility which was located within the IDC property."

Mr. Donovan, we have identified four memos that you prepared for Mrs. Clinton relating to Madison Guaranty and we will go through them on the second round. There was a January 3, 1986 memo and a January 23, 1986 memo on the brewery issue. Then there were two other memos, one February 17 and one March 4, 1986, on the so-called utility issue. Do you recall those memos?

Mr. DONOVAN. Yes, sir, I do.

Mr. GIUFFRA. Now the Rose Firm billing records that we have obtained don't reflect time by Mrs. Clinton, doing legal research in connection with those memos. Are you aware of whether she did any legal research in connection with those memos?

Mr. DONOVAN. I am not aware of any.

Mr. GIUFFRA. They do not reflect that Mrs. Clinton spent time drafting the memos or revising the memos. Do you recall whether she spent time drafting or revising the memos?

Mr. DONOVAN. Mr. Giuffra, I do not recall that. The time records would be the best—

Mr. GIUFFRA. The best way to figure out what Mrs. Clinton did?

Mr. DONOVAN. I think so.

Mr. GIUFFRA. As best we can tell, Mrs. Clinton spent several hours reviewing your memos and in terms of meeting with clients that can be directly traced to the memos, and that's about all we can find. Now if she did 29.35 hours of work, you don't know what the other 27½ hours of work involved, do you?

Mr. DONOVAN. I think they are set forth in the billing records.

Mr. GIUFFRA. But, for example, you billed 22.7 hours on this legal research, yet Mrs. Clinton, at least according to the Rose Law Firm billing records, billed 29.5 hours on Madison matters relating to IDC. Do you have any explanation for the difference between the fact that you billed less time than Mrs. Clinton did, yet Mrs. Clinton's interrogatory indicates that what she did was mostly related to the legal research that you were involved in?

Mr. DONOVAN. Well, as I said before, it is not unusual when an associate does research for a partner, for the partner to have the contact with the client. I notice that she says in her response to her interrogatory that she conferred with Mr. Ward on several occasions, who was an employee of the client at that time. And so that is not unusual to me at all.

Mr. GIUFFRA. Would it have been normal for Mrs. Clinton to have spent 27 hours conferring with Mr. Ward about a legal research memorandum that you had prepared?

Mr. DONOVAN. I don't see that as being out of the ordinary, no, I don't. I mean, I think she's had—clearly she had all kinds of con-

versations with him, he was employed by the client and she had to speak with him about the legal research, so no.

Mr. GIUFFRA. Now, Mr. Ward, in various statements that he has submitted to various investigatory bodies in connection with this matter has indicated that he never spoke with Mrs. Clinton with regard to the brewery issue. So do you have any other explanation for how Mrs. Clinton might have spent her time with regard to the IDC matter?

Mr. DONOVAN. Well, like I said, I think the billing records speak for themselves and I think she, apparently from the billing records, had spent time, not only reviewing my research, having meetings with me, but also speaking with the client, so I think the records probably speak for themselves in that regard.

Mr. GIUFFRA. Why don't we just quickly put on the Elmo your January 3rd memo. This is a short, one-page memo that you wrote to Mrs. Clinton regarding this issue of the brewery. And if we could put up again the Rose billing record 29011.

In just trying to piece this together, it indicates that on January 2nd, you billed 3 hours to the so-called wet/dry issue, and then on December 30th and 31st, you billed another hour and a half, both days, to that issue. Then on the 14th, you spoke with Mrs. Clinton, at least according to your records, for a quarter of an hour; right?

Mr. DONOVAN. That's correct.

Mr. GIUFFRA. Now, Mrs. Clinton, on the same day, bills an hour of time for a conference with J. Birch, K. Shemin, and R. Donovan. Do you see that?

Mr. DONOVAN. I do.

Mr. GIUFFRA. Were Birch and Shemin involved in the brewery issue as far as you know?

Mr. DONOVAN. Mr. Giuffra, I don't recall much, if anything, about this research, other than looking at the memos, these many years afterwards. And it appears from the billing records that they were, so I don't—

Mr. GIUFFRA. But they don't bill any time to the matter?

Mr. DONOVAN. Well, that's not unusual if—for instance, if an attorney is called in to ask a question or two, to have a conference with that attorney and he is not involved in the day-to-day activities of that matter, for him not to record his time while the attorney who is in charge of that matter would record his or her time.

Mr. GIUFFRA. Is it possible that Mrs. Clinton had separate meetings with Mr. Birch and Mr. Sheman? Is that why, for example, you are only billing a quarter of an hour and she is billing an hour?

Mr. DONOVAN. Yes. Sure.

Mr. GIUFFRA. If we could put up the February 7, 1986 memo from Mr. McDougal to Mr. Tucker which indicates that, "Attached is a legal opinion that Seth got from his attorney." Now as far as you knew, it appears, at least from this memo, that Mr. McDougal thought that Rose was representing Mr. Ward. Is that consistent with your understanding?

Mr. DONOVAN. No, Mr. Ward was not our client in this matter, Madison Guaranty was. And certainly I don't know what Mr. McDougal was thinking, but he paid our bills for that work.

Mr. GIUFFRA. Let's put on the Elmo the note of Mrs. Clinton to Mr. Donovan. This appears to be a handwritten note in which Mrs.

Clinton indicates that, "I visited with Seth Ward and gave him a copy of your memo, and with Ken Shemin. Please see Ken about a strategy to approach the ABC to argue the 'dissolved township' theory. Thanks, Hillary. Charge Madison Guaranty IDC." Now, you never spoke to Mr. Ward in connection with this matter; right?

Mr. DONOVAN. I don't recall it.

Mr. GIUFFRA. Let's put the February 17 memo on the Elmo. This is the memo you prepared, this is a rather long memo, 12 pages, and the research has to do with the sale of water by the utility that was located on the property, something that's known as Castle Sewer & Water, outside of the project; is that right?

Mr. DONOVAN. I don't believe that I referred to it as Castle Sewer & Water.

Mr. GIUFFRA. But we now know that's the name of the utility?

Mr. DONOVAN. I do not know at the time I wrote this memo whether or not that was the name of the utility. I understand that, at some point in time, that was the name of the utility that was out there, but at the time I really don't know.

Mr. GIUFFRA. Do you know whether Mrs. Clinton had any role in preparing this particular memo?

Mr. DONOVAN. No. She reviewed the work, but I don't know—

Mr. GIUFFRA. But the drafting would have been done by you and the research?

Mr. DONOVAN. That's correct.

Mr. GIUFFRA. If we could put up Rose billing record 29013. This billing record indicates that on February 11, 12, and 13, you had billed time to prepare this memo, and there is no indication that Mrs. Clinton did any work in connection with preparing this memo.

If we could put up another record which is 29016. Again, you bill 1.25 hours in connection with the memo, but there is no time that Mrs. Clinton is billing with regard to this memo.

Now if we could put up the March 4 memo that was prepared by Mr. Donovan. This is also on the same sewer issue. This is a 4-page memo. You have seen this before?

Mr. DONOVAN. Yes, sir.

Mr. GIUFFRA. Do you recall Mrs. Clinton being heavily involved in preparing this particular memo?

Mr. DONOVAN. No, I don't recall her being involved in the preparation of the memo. We discussed it, I am sure we discussed it. I'm sure she reviewed the work.

Mr. GIUFFRA. Let's put Rose billing record 29016. This billing record indicates that on March 4, you billed 3 hours to prepare this 4-page memo, dated March 4, same day?

Mr. DONOVAN. Yes, sir.

Mr. GIUFFRA. Then Mrs. Clinton on, it appears to be, March 10th, bills .30 of an hour, a little bit over 15 minutes, to review the memo; is that right?

Mr. DONOVAN. Yes, sir.

Mr. GIUFFRA. So when you actually go through the memos and you try to trace Mrs. Clinton's billings, it doesn't appear Mrs. Clinton was very involved in the actual drafting, minimal time reviewing the memos, but no time in either doing research or drafting of these memos?

Mr. DONOVAN. Like I said, I think that the billing records are the best record of what she did and did not do.

Mr. GIUFFRA. It also indicates that conversations with the clients that Mrs. Clinton had were all in December and January, and not in the later period, when you were doing most of your work; isn't that right?

Mr. DONOVAN. I don't know, Mr. Giuffra.

Mr. GIUFFRA. But you prepared the memos subsequent to the time Mrs. Clinton was having the conversations with Seth Ward?

Mr. DONOVAN. Well, I don't know that. If the billing records show that, the billing records would be the best evidence of that.

Mr. GIUFFRA. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me start with an issue that has come and gone and come and gone and I am pleased that it has been addressed at least in the questioning, in terms of consistency with the records. And that is, what the attorneys at the Rose Firm referred to when they were referring to this piece of property that was the subject of this research. Mr. Donovan, how was it referred to?

Mr. DONOVAN. IDC.

Mr. BEN-VENISTE. Mr. Thrash, how was it referred to when you were involved in the matters that you have testified about?

Mr. THRASH. It was referred to as IDC.

Mr. BEN-VENISTE. Mr. Dover, how was it referred to by you in connection with all aspects relating to the sale of the property to Madison?

Mr. DOVER. IDC stands for Industrial Development Company, which was a client of my law firm, and I was representing Industrial Development Company, or IDC, as the seller. In my shop, I referred to it as Little Rock South District because it was the second industrial district that that particular client had set up.

Mr. BEN-VENISTE. And it made perfect sense, so far as you were concerned, for the people on the other side of the transaction, in referring to the matter, refer to the name of the company that owned the parcel?

Mr. DOVER. Sure.

Mr. BEN-VENISTE. At any time, Mr. Donovan, Mr. Thrash, was this parcel referred to within the Rose Law Firm as Castle Grande?

Mr. DONOVAN. No, sir.

Mr. THRASH. Not to my knowledge. The first time that I heard of Castle Grande was in the media reports, probably during the campaign.

Mr. BEN-VENISTE. So now we have heard the testimony of Mr. Massey, Mr. Clark, you, Mr. Donovan, and you, Mr. Thrash, that no one at the Rose Law Firm, to the best of your knowledge, referred to this matter as Castle Grande.

Let me turn to a piece of old business that is referred to in your letter to this Committee, to Chairman D'Amato and Ranking Member Sarbanes, dated January 31, 1996, wherein you make reference to a letter from Mr. Clark to the Committee. But it makes reference to a document which the Chairman referred to and I think the confusion that resulted from that document—and let's put it up on the Elmo so we know what we are talking about. It does not

appear to have a Bates stamp number, but it has voucher 4391 on the top of it.

Now apparently, according to the letter that we have received from you, this document which the Chairman, in his questioning, made reference to, has the initials CG on it, which could well refer to Castle Grande. However, as you point out in your letter today, this is not a document which was made or maintained by the Rose Law Firm; is that correct, Mr. Thrash?

Mr. THRASH. That is correct.

Mr. BEN-VENISTE. Mr. Donovan?

Mr. DONOVAN. That is correct.

Mr. BEN-VENISTE. So that apparently what has occurred is that a Rose Law Firm document was superimposed or rather, this document was superimposed on top after a Rose Law Firm document and turned over by the RTC to us as being a Rose Law Firm document. Is that your understanding of what likely occurred?

Mr. DONOVAN. Yes, sir, Mr. Ben-Veniste. What appears—this voucher is an internal Madison Guaranty document and they stapled it to a Rose Law Firm bill. And I think you can see the staple mark on top, and then it was simply placed on the Xerox machine and copied like that.

Mr. BEN-VENISTE. Let's put up the other version of this. We have the clean version of it here. The other version that we were working from, I think, has underneath, the bottom part of the Rose document that you can see underneath. And it would appear that this was all one document, whereas, as you say, it appears that a photocopy was made, superimposing this internal Madison document on top of a Rose document?

Mr. DONOVAN. That's correct.

Mr. BEN-VENISTE. And therefore, it was somewhat confusing and the implication was that the document we were looking at was prepared by the Rose Law Firm; is that correct?

Mr. DONOVAN. That's correct, sir.

Mr. BEN-VENISTE. So that now looking at it, you can testify under oath that this is not something which was prepared by the Rose Law Firm and therefore the reference to CG, insofar as that may allude to Castle Grande, was not your reference?

Mr. DONOVAN. That's correct.

Mr. THRASH. That is correct.

Mr. BEN-VENISTE. Now similarly, with respect to the way your billing records were kept and your memoranda, and we can go through this to some extent, you referred to this matter as the IDC matter; is that correct, Mr. Thrash?

Mr. THRASH. That is correct.

Mr. BEN-VENISTE. And is that correct, Mr. Donovan?

Mr. DONOVAN. Yes, sir.

Mr. BEN-VENISTE. Mr. Dover, perhaps you can answer a preliminary question—and please don't take offense by the asking of the question—but was there any chicanery involved or any fraud or misrepresentation, to the best of your knowledge, involved in the acquisition of this property from your client?

Mr. DOVER. No, sir.

Mr. BEN-VENISTE. That is not to suggest there is any evidence anywhere to so suggest, but I wanted to give you the benefit of responding to that question, and clarifying the record as we—

Mr. DOVER. Let's be clear. Are you talking about chicanery on the part of the purchaser?

Mr. BEN-VENISTE. That's right, in connection with the purchase price which was, I take it, set on the basis of an arms-length negotiation?

Mr. DOVER. Yes, sir, that was very hotly debated and negotiated.

Mr. BEN-VENISTE. There isn't any question but that the purchase price for this property was resolved as the result of a bona fide arms-length negotiation?

Mr. DOVER. Beyond any question. I see a statement I had given to a RTC examiner is in the file, and it alludes to the fact that this was sort of a three-cornered transaction, which I think probably added to the arms-lengthiness, because IDC, Industrial Development Company, was very much in debt to the downtown Little Rock banks. They had a role in approving the sales price because this was the largest asset that IDC had left to pay those banks, and they were very much interested in what that sales price was.

Mr. BEN-VENISTE. These are financial institutions, again so that we are clear, separate and apart from Madison Guaranty Savings & Loan?

Mr. DOVER. Oh, yes.

Mr. BEN-VENISTE. OK. So when you say a three-part transaction, your clients—lenders were very interested in your client maximizing the amount that he could or it could obtain as a result of the sale of this parcel?

Mr. DOVER. Absolutely, because that was going to be their principal source of payment, just about their total source of payment, and they were looking at a situation where they weren't going to come out on the thing.

Mr. BEN-VENISTE. Now in terms of your response earlier to the question that was put to you about whether a reference in a billing record maintained by the Rose Law Firm about Mrs. Clinton's contacts refreshed your recollection, I take it it is your position that, 11 years or so after the fact, that this reference does not refresh your recollection as to whether you had such a conversation?

Mr. DOVER. That's true, it does not. I have no present recollection of that.

Mr. BEN-VENISTE. You will not simply satisfy someone's interest in having you give an affirmative answer, provide an affirmative answer if you did not have a recollection?

Mr. DOVER. In other words, your question is would I say I had a recollection when I didn't, the answer is I would not say I had a recollection when I didn't.

Mr. BEN-VENISTE. Let me turn back now to the gentleman from the Rose Law Firm. With respect to the so-called wet/dry issue, Mr. Donovan, is it correct to say that, at the Rose Firm, you were primarily involved in doing the research on that issue?

Mr. DONOVAN. I think that's correct.

Mr. BEN-VENISTE. We have a memorandum, Madison Guaranty 000555, which is a memo to Seth Ward from Jim McDougal, dated November 20, 1985. And it talks about essentially a Mr. Bill Lyon

relocating a brewery operation on the property that you were referring to as IDC; is that correct?

Mr. DONOVAN. Yes, sir.

Mr. BEN-VENISTE. Mr. McDougal, in his memorandum, seemed a lot more positive about the possibility of Mr. Lyon moving than Mr. Lyon did when he appeared before this Committee. Mr. Lyon said that he was basically humoring Mr. McDougal at that point because Mr. McDougal was a substantial creditor of his at the savings and loan. And once he heard Mr. McDougal's proposition about who would be responsible for the financing of the project, he, in his own mind, was not interested. But I take it you, on the basis of contact with the client, and Mrs. Clinton, regarded this as a viable possibility, were instructed to do the research on the issue, and complied with that request?

Mr. DONOVAN. Yes, I think that's correct.

Mr. BEN-VENISTE. Could you explain what the issue was?

Mr. DONOVAN. Yes. Where the brewery, which would have a tasting room in it, was to be located was in a township that was wet. However, earlier that township had been—other smaller townships had been included in that township. One of those smaller townships that no longer existed had, at some point in time, voted dry under Arkansas' what we call the local option laws. And the question was, was the fact that the smaller dry township being incorporated into the larger wet township, did it retain its dry status or did it become wet.

Mr. BEN-VENISTE. Can you say whether this project of doing this research, which I guess included some historical digging as well as legal research, involved any fraud or chicanery, was this trying to put something over on somebody or defraud somebody out of something?

Mr. DONOVAN. No, it was a very straightforward issue.

Mr. BEN-VENISTE. Indeed, were there any strings pulled with any regulatory agencies or any favors requested, or any such thing done, to the best of your knowledge?

Mr. DONOVAN. No.

Mr. BEN-VENISTE. What happened as you progressed with this research?

Mr. DONOVAN. Well, I think that—reviewing the memoranda, I came to the conclusion that, first of all, there was no Arkansas law on point and so I went to other jurisdictions and determined that the smaller township would have retained its dry status. There was a minority position, I think, from some State that held the opposite; that is, that the smaller township would lose its dry status when it was incorporated into a wet township.

But my conclusion was that was the minority position; the majority position was it would retain its dry status. And if you wanted to put a brewery with a tasting room there, you had to either convince the ABC, which is the Alcoholic Beverage Control Board, to adopt the minority position, or to cause an election to be held in that smaller geographic area that used to be the township to vote to become wet.

Mr. BEN-VENISTE. Now, you were shown a memorandum, I think, a short memorandum, of one page, "Issue presented in conclusion." Did you prepare a more extensive memorandum on that subject?

Mr. DONOVAN. Yes, this was—I think that you are referring to the January 3rd memorandum, “Issue presented in conclusion.”

Mr. BEN-VENISTE. Yes.

Mr. DONOVAN. Yes. There is more pages to that. This is just the cover—the first page.

Mr. BEN-VENISTE. Lest there be any confusion, and perhaps I wasn't paying attention, but it seemed like the implication was that this first page was the full extent of your work on the subject. Indeed, and I apologize if I am drawing the wrong inference from what was put in front of you. But I have here 6 additional pages of detailed research and case citations that you provided. And that has been marked document—several different agencies have put their imprimatur on this. But it is 7 pages. The last of which is Rose Law Firm 298.

Mr. DONOVAN. Yes, sir.

Mr. BEN-VENISTE. Does that comport with your document?

Mr. DONOVAN. Yes, that is the document I have in front of me.

Mr. BEN-VENISTE. Now after you provided that document in January, Mrs. Clinton advised you that she had discussed it with Mr. Ward, according to that note?

Mr. DONOVAN. That's correct.

Mr. BEN-VENISTE. If we look at the billing records, we see that most of the telephone conversations with Mr. Ward that are alluded to occurred in December and then again on January 14?

Mr. DONOVAN. Correct.

Mr. BEN-VENISTE. Does that comport with your present recollection that Mrs. Clinton was the person to deal with Mr. Ward?

Mr. DONOVAN. Yes. And as I said before, you know, I wasn't privy to these conversations but I believe that they had to do with this issue, particularly if you will look at the entry for Mrs. Clinton on, I think it is December 20th. She says, “Telephone conference with S. Ward, search for map,” which—

Mr. BEN-VENISTE. Does that refresh your recollection as to a particular—

Mr. DONOVAN. Yes, that that would be consistent with their discussion of can we build a brewery there, is it wet, is it dry? The first thing one would do is find a map, what township is located—under Arkansas' local option laws, a entity as small as a township even within a city can vote to become wet or dry. So if you are doing research on this area you have to have a map because you have to figure out where the townships are.

Mr. BEN-VENISTE. To the best of your knowledge, at the time Mr. Ward was either an officer or employee of Madison?

Mr. DONOVAN. At that time he was, to the best of my knowledge.

Mr. BEN-VENISTE. We know that he is Webb Hubbell's father-in-law, so I take it he was a man in his 60's—well, you tell me how old he was at the time?

Mr. DONOVAN. I would say mid-60's, mid-to-late 60's.

Mr. BEN-VENISTE. Had you met him sometime during all this?

Mr. DONOVAN. I don't think I ever met him. I knew who he was.

Mr. BEN-VENISTE. How old were you at the time?

Mr. DONOVAN. I was much younger. I was in my 20's.

Mr. BEN-VENISTE. Were you a partner at this time?

Mr. DONOVAN. No, I was an associate.

Mr. BEN-VENISTE. Being that Mrs. Clinton was a partner in the firm, Mr. Ward was in his 60's at the time, and you were a young associate, did you find it unusual that the client contact between the employee of Madison and the Rose Firm was through a partner of the firm?

Mr. DONOVAN. No, that would have been the standard operating procedure.

Mr. BEN-VENISTE. Now that you are a partner in the firm, would that be your operating procedure?

Mr. DONOVAN. That's usually the case.

Mr. BEN-VENISTE. Out of deference to a client, particularly one of mature years, it would not strike you as being unusual or unreasonable, or in some way untoward, for a partner in the firm to be the one to have the contact with the client?

Mr. DONOVAN. No, not at all.

Mr. BEN-VENISTE. Again, by "client," I am referring to Madison through its employee.

Mr. DONOVAN. Yes, sir.

Mr. BEN-VENISTE. Beyond that—and I don't want to appear to be critical in any way of Mr. Ward, I haven't met him. But by reports, he would seem to have been, at that time, a man somewhat set in his ways and somewhat opinionated. Did you have that view or was that a prevailing view at the firm?

Mr. DONOVAN. Yes, he was brusque.

Mr. BEN-VENISTE. Mr. Thrash, you are smiling. Perhaps you can shed a little light on that.

Mr. THRASH. Yes, sir, I think you are correct in your description.

Mr. BEN-VENISTE. So he could be somewhat brusque or prickly, and again the type of client representative that one would expect a partner would deal with rather than subjecting a young associate to that experience?

Mr. DONOVAN. Thankfully so.

Mr. BEN-VENISTE. So again, that is another reason why it did not strike you as unusual that Mrs. Clinton would be the person talking to Mr. Ward.

Do you know whether, as a result of reviewing these records, these time records, the telephone contact was instigated by Mrs. Clinton or by Mr. Ward?

Mr. DONOVAN. No, sir, I can't tell that from the records.

Mr. BEN-VENISTE. Mr. Thrash, do you have any view about whether Mr. Ward was the type of person who was hesitant about picking up the phone and asking for a progress report or asking questions?

Mr. THRASH. No, I think he would probably be fairly demanding.

Mr. BEN-VENISTE. So, for all we know, on the basis of looking at this—and again I recognize this is 11 years ago—most of these, if not all of these, telephone conferences could have been conferences instigated by Mr. Ward on the progress of this matter?

Mr. DONOVAN. Sure.

Mr. BEN-VENISTE. Now in addition to the wet/dry matter, I do want to go into the question of the acquisition of the property itself. And Mr. Thrash, I take it you were the person most knowledgeable about that?

Mr. THRASH. Yes, sir.

Mr. BEN-VENISTE. Rather than ask you a series of questions, why don't you lay out in narrative form your recollection of how this matter originated and your involvement.

Mr. THRASH. Mr. Ben-Veniste, my involvement in this transaction was very limited. When I first got involved, I looked at an agreement that Mr. Dover had prepared, I made a few changes on it. I believe I went to an IDC board meeting. This was in early August. I prepared some corporate resolutions that authorized Madison Financial Corporation to purchase the entire tract of property for \$1,750,000. That was on August 20th, I believe.

From that point on, I had no further involvement in it until closing. I was not involved in the negotiations of the ultimate agreement that was signed. I was not involved in participating with the Abstract Company and getting that started, and having the Abstract Company commence preparing the title commitments. I was not involved in that. I was not involved in the preparation of the deeds. I was not involved in preparation of the closing documents.

I simply went to closing sometime, I believe, October 4th. Prior to the closing, I did review the title commitment, and then went to closing. And that basically was, in a nutshell, the extent of my involvement in the acquisition.

Mr. BEN-VENISTE. Again, all of the documents that you saw referred to, other than the technical descriptions of the land, referred to the IDC property?

Mr. THRASH. That's correct.

Mr. BEN-VENISTE. And specifically not Castle Grande?

Mr. THRASH. That is correct.

Mr. BEN-VENISTE. We have RTC documents 66 and 67, if we could show those to the witnesses and put them up, just to nail down this point. Looking first at RTC 66, which is a memo relating to dated 2/17/86, and again simply for the way that this property was referred to, it is referred to as Madison Guaranty Savings & Loan/IDC; is that correct? That's February 1986.

Mr. DONOVAN. That's my memo, and that is correct.

Mr. BEN-VENISTE. And with respect to RTC 67, similarly that document, which is now into March 1986, refers to Madison Guaranty Savings & Loan/IDC; is that correct?

Mr. DONOVAN. That's correct.

Mr. BEN-VENISTE. Ultimately, Mr. Thrash, do you know how many residential lots were ever sold on this IDC property?

Mr. THRASH. No, sir, I do not. After the acquisition, I had no further involvement in the development of this property.

Mr. BEN-VENISTE. According to the B&H report at page 45, it is our information that a total of 30 residential lots were sold, in total. And that would be a very small fraction, would it not, of the 1,050 acres on IDC?

Mr. THRASH. Yes, sir, it sure would be.

Mr. BEN-VENISTE. August 20 to September 30, 1985, are you able to tell, Mr. Thrash, whether you did any work with respect to this matter?

Mr. THRASH. Yes, sir. I reviewed my time records, and I had no involvement in this transaction from August 20 until September 30, 1985.

Mr. BEN-VENISTE. So the September 3, 1985 letter from Mr. McDougal to Ward, which was summarizing an agreement to divide the IDC property, was not something that was shown to you?

Mr. THRASH. No, sir.

Mr. BEN-VENISTE. Similarly, the September 12, 1985 Madison Financial Corporation board minutes were not something that you were privy to?

Mr. THRASH. That's correct. I had no involvement in this transaction from August 20 through September 30.

Mr. BEN-VENISTE. And most importantly, the September 24, 1985 agreement between McDougal and Ward, either the typed version or the handwritten version, you pick them, I take it you were not privy to those as well?

Mr. THRASH. That is correct.

Mr. BEN-VENISTE. The Pillsbury Madison & Sutro Report, page 79 stated, "The theory that Ward or McDougal wanted to have the Rose Law Firm document the terms that [arguably] make Ward a straw man is hard to reconcile with the fact that in other respects, McDougal and Ward seemed to have resorted to self-help rather than the advice of counsel." Do you agree with that conclusion?

Mr. THRASH. Yes, sir.

Mr. BEN-VENISTE. And supporting that conclusion are the documents that I've alluded to, and there are more in that interim time period, that were neither drafted by you or shown to you?

Mr. THRASH. That is correct.

Mr. BEN-VENISTE. Finally—I see my time is about to expire—is it correct, Mr. Thrash, that the division of the property between Mr. Ward and Madison Bank/McDougal or Madison Savings & Loan/McDougal was something which was unknown to you at the time, contemporaneously?

Mr. THRASH. I'm not sure I understand your question.

Mr. BEN-VENISTE. The agreement that Mr. Ward had with Mr. McDougal was not made known to you contemporaneous with the closing?

Mr. THRASH. That's correct.

Mr. BEN-VENISTE. Nothing further.

Mr. GIUFFRA. Mr. Donovan—

The CHAIRMAN. Wait a second. I know you are anxious. We are going to recognize Mr. Giuffra for several minutes and then go to Senator Bond.

Mr. GIUFFRA. Mr. Donovan, in Mrs. Clinton's interrogatory, she indicated that her primary work on the IDC matter was supervising your legal research. Now the billing records indicate that Mrs. Clinton billed 29.5 hours to IDC and there's 14.5 hours that are unaccounted for. You billed 22.7 hours to IDC, which is a little less than 7 hours—Mrs. Clinton billed 7 hours more than you did.

You indicated that one possible explanation for this discrepancy is the fact that Mrs. Clinton was dealing with Mr. Ward and communicating with Mr. Ward with regard to the legal research that you were doing; is that right?

Mr. DONOVAN. Yes, sir.

Mr. GIUFFRA. So you believe that Mrs. Clinton's telephone calls with Mr. Ward had to do with your legal research on the subject that you were researching?

Mr. DONOVAN. Yes, the subject, and that is—for instance, the proposal to build the brewery on this property, and all the myriad issues that go along with that, not specifically my legal research.

Mr. GIUFFRA. But the issue of the brewery would be your best guess as to the explanation for how Mrs. Clinton spent the 29 hours that she billed to the IDC matter?

Mr. DONOVAN. Well, that along with the utility issue.

Mr. GIUFFRA. But both of those legal research issues would be your best guess as to what Mrs. Clinton did for the 29.5 hours?

Mr. DONOVAN. I would call them the issues. The legal research was part of that matter.

Mr. GIUFFRA. And the conversations with Seth Ward related to the legal research?

Mr. DONOVAN. Well, I don't know what it was, but that's my best guess.

Mr. GIUFFRA. OK. We have a copy of an interview that Mr. Ward gave to the RTC IG. I think we gave you a copy of it. Do you have a copy? The date of this interview is September 29, 1994, and if I could just read—and it actually was sworn to by Mr. Ward.

Mr. Ward states on page 3, "I have no knowledge of ever discussing at all any issues concerning a brewery, liquor licenses or a question of whether a particular jurisdiction was wet or dry." Does that cause you to rethink your explanation for how Mrs. Clinton spent her time?

Mr. DONOVAN. No, but I still think that is the most logical explanation.

Mr. GIUFFRA. But that's not what Mr. Ward says.

Mr. DONOVAN. Apparently so.

The CHAIRMAN. Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Mr. Thrash, you prepared the documents for the closing on the sale of the IDC property on October 4th; is that correct?

Mr. THRASH. No, sir, I did not.

Senator BOND. Who did that?

Mr. THRASH. Mr. Dover did. Mr. Dover would have prepared the deeds. Beach Abstract would have prepared the closing statement, the settlement statements.

Senator BOND. Were you involved in that transaction?

Mr. THRASH. Senator, I don't recall my involvement, but based upon my billing records and my time, yes, I was at that closing.

Senator BOND. We have the billing records beginning October 18th, but we don't have any of the billing records prior to that time. Do you know what happened to the billing records of the Rose Law Firm for that period?

Mr. THRASH. Well, Senator, you have all of my billing records that show the time that I spent from August 6th in detail per day.

Senator BOND. What we're asking about is the Rose Law Firm—do you have any idea of what happened to the Rose Law Firm records which would show the time billed by all attorneys?

Mr. THRASH. Are you referring to the computer printout?

Senator BOND. The computer printout.

Mr. THRASH. Those are maintained by the firm for a period, I believe, of about 3 years, and then they're destroyed. I would not anticipate those would be available for that period of time. The reason

my timesheets were available is simply because I had put them in my closed files and I never destroyed them.

Senator BOND. Did you have any other files on the closing other than your time records in that closed file?

Mr. THRASH. No, sir, I did not.

Senator BOND. At the time of the transfer, Madison Guaranty/Madison Financial was your client?

Mr. THRASH. That is correct.

Senator BOND. Did you know of the regulations limiting the amount of assets that Madison Financial could have involved in any one real estate transaction?

Mr. THRASH. No, sir, I did not.

Senator BOND. Did you know that part of that land was transferred to Seth Ward?

Mr. THRASH. Yes, sir. At the closing I would have learned that Mr. Ward acquired a portion of that property and Madison Financial acquired a portion of it.

Senator BOND. Did you know that Madison Financial made a loan to Mr. Ward to enable him to acquire that property?

Mr. THRASH. No, sir, I did not.

Senator BOND. Was there another attorney who was representing Madison or Madison Financial?

Mr. THRASH. No, sir. I was the attorney representing Madison Financial.

Senator BOND. Do you not have some responsibility to learn, when you go to a closing, whether there is compliance with the regulations in the acquisition of property?

Mr. THRASH. Well, Senator, I think that would depend upon the scope of my engagement with the client. I had not represented savings and loans before, this is my first transaction involving a savings and loan, although I had represented banks in the past. When I represented a bank, I would not go and determine whether—and I would not be expected to determine whether the bank was in compliance with whatever regulations and requirements that would be subject to the bank. I would not do that. So I don't believe I was expected to do that, Senator.

Senator BOND. Was the billing partner in charge of this account Mrs. Clinton at the time, in charge of—

Mr. THRASH. Senator, I would not have known that.

Senator BOND. You were the only one who was doing work for Madison Financial/Madison Guaranty in that operation?

Mr. THRASH. On this particular transaction, I was the only one that did work other than Dave Thomas. Dave Thomas did about 1.2 hours back in August.

Senator BOND. Was it regarded as your client?

Mr. THRASH. No, sir.

Senator BOND. Whose client was it, then?

Mr. THRASH. Senator, I did not have a relationship with Madison where they would have called me and asked me to work on this transaction. Someone in our firm would have contacted me and said, would you go handle this or would you work on this. I do not have a recollection of who that was that contacted me.

Senator BOND. When you completed that transaction, would you normally do a memorandum to the billing partner recounting that the matter had been closed?

Mr. THRASH. No, sir.

Senator BOND. You just assume that if the partner in charge doesn't hear back from you, they assume that it has been handled properly?

Mr. THRASH. Well, Senator, I believe I probably was the partner in charge of that IDC transaction. Someone in the firm asked me to work on it. I don't think I was supervised. I think I was the attorney representing Madison Financial in that transaction, and I don't think I was reporting to anyone, at least not based upon my billing records and the documents that I've been able to look at.

Senator BOND. Did you, Mr. Thrash, or you, Mr. Donovan, do any work or have any conversations with Mrs. Clinton about the 1986 option for Seth Ward to Madison Financial? Did you do any work on that transaction?

Mr. DONOVAN. I did not.

Mr. THRASH. I did not, Senator.

Senator BOND. If you were preparing an option for a transaction, would you in the normal course of your work as an attorney have to find out who owned it? In other words, you would have to know who had the title and whether there was a mortgage on it, would you not?

Mr. THRASH. No, sir. I don't think you would need to do that, no.

Senator BOND. To prepare an option for real estate?

Mr. THRASH. If a client came in and asked me would you prepare an option on this property, I wouldn't go do a title search to see if the client owned it. I would prepare the option as he requested.

Senator BOND. Mr. Donovan, you didn't have to—would you prepare—make any search of any title?

Mr. DONOVAN. Senator, I am a trial lawyer. If I even dabbled in real estate, it would be malpractice waiting to happen. I wouldn't venture an opinion.

Senator BOND. Mr. Dover, you were involved in real estate transactions. If you prepare a real estate transaction document, is it customary to find out who owned the property, who has a mortgage on it?

Mr. DOVER. Senator, I think it would be if you were representing the purchaser. I think maybe Mr. Thrash took your question to be, were you representing the seller would you go behind the seller's own knowledge that he owned the property and go do a title check behind his representation to you that he did own it. If I was representing the purchaser, I would certainly recommend strongly to the client that we find out who owned the property before we paid for an option on it.

Senator BOND. Well, in this instance, the best we can tell, they seemed to be representing both sides. We do not know whether Mr. Ward had any other counsel. Was Rose Law Firm representing both Mr. Ward and Madison Financial?

Mr. THRASH. No, sir, I don't think so. I would assume we were representing Madison Financial.

Senator BOND. And they would be purchasing property held by Mr. Ward; right? That would be an option to purchase?

Mr. THRASH. That was the option you're referring to?

Senator BOND. Yes.

Mr. THRASH. The option you are referring to, Senator, I believe has a \$1,000 option price, and I don't think we would have gone and spent several thousand dollars to determine title on a \$1,000 option price. I don't think that would have happened, I really don't.

Senator BOND. Mr. Thrash, if you were the billing partner on the initial transaction, do you have any idea how the responsibility for that account shifted from you to Mrs. Clinton?

Mr. THRASH. Senator, I don't believe I was the billing partner.

Senator BOND. You were the responsible—

Mr. THRASH. I was the responsible party but I was not the billing partner.

Senator BOND. Mr. Donovan, you have described to us the legal research you did. Mrs. Clinton was the billing partner, supervised your work, you did memoranda to her and provided her information. It appears that she exercised the customary role of the partner responsible or billing partner. Is that fair?

Mr. DONOVAN. That's fair.

Senator BOND. To try to, as an alternative, to shed some light on this billing, the billing or the standard value was \$912 for Mrs. Clinton's time, she billed some \$2,700. It looks very possible to me that there was a success fee, or completion fee, or a reward for extraordinary legal talent. It's just about three times the standard value. Did the Rose Law Firm to your knowledge, either of you, include success fees for conclusion of a transaction where the billing partner may not have put in the time but because of the responsibility, the oversight, and perhaps strategies involved, that there would be an enhanced billing? Has the Rose Law Firm ever done that to your knowledge?

Mr. DONOVAN. Not without approval of the client.

Mr. THRASH. I think that would be correct.

Senator BOND. But that is possible; is that correct?

Mr. DONOVAN. I suppose it would be possible if a billing arrangement was approved by the client and with the client's consent.

Senator BOND. Under the practices of the Rose Law Firm, does the collection of or the amount of fees collected by the partner who brings in the billing or is responsible, is that reflected in the partner's compensation in any way?

Mr. DONOVAN. Yes, we have a compensation scheme that takes into consideration how many fees are brought in the door, but it's much more complicated than that.

Senator BOND. But that is one factor?

Mr. DONOVAN. That's one factor.

Senator BOND. If you bill it out and you get paid, there is a financial reward for the partner who is in charge?

Mr. DONOVAN. Yes, sir, but in this case that amount would be so minimal as to not affect the percentage of the profits of the firm that Mrs. Clinton would have been entitled to.

Senator BOND. At what point did either of you learn that there were fraudulent transactions or there were sham transactions described in the testimony earlier today by Mr. Fitzhugh regarding this property and the use of straw parties to transfer the property

back and forth? When was your first knowledge, Mr. Donovan, and when was yours, Mr. Thrash?

Mr. THRASH. Senator, I cannot say that I have acquired that knowledge. I didn't listen to the testimony this morning, and I have not made any conclusions or assumptions, and I don't think I have got to that point, Senator.

Senator BOND. Mr. Donovan?

Mr. DONOVAN. Senator, I don't know that I would buy into that entire characterization. I will say that I became familiar with these transactions later on in the representation of the RTC in the Frost matter.

Senator GRAMS. Senator Bond, your time has expired.

Senator BOND. Thank you.

Senator GRAMS. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me just elaborate on the points that have been made here with respect to the option agreement. In terms of simply drafting an option agreement, Mr. Thrash, one would not expect to do any sort of title search even if there was a substantial amount of compensation involved, until it came time to execute on the option; wouldn't that be fair to say?

Mr. THRASH. It depends on when the option price was paid. If the option price was paid, a substantial option price was paid with the execution of the agreement, then certainly you would want to do some title work there, but if the option price was not paid until you were ready to acquire title, then you would not do so until you acquired title.

Senator SARBANES. The option price here was \$1,000; right?

Mr. THRASH. Yes, sir, that's my recollection.

Senator SARBANES. The suggestion that this various title work should have been done ahead of the option would have cost far more than \$1,000; is that correct?

Mr. THRASH. That's possible, yes, sir.

Mr. BEN-VENISTE. Indeed, the parties to the option agreement were both parties that were intimately familiar with the property involved at any event?

Mr. THRASH. That is correct. And title policies had already been issued on the property to those individuals.

Mr. BEN-VENISTE. Now the 6 percent Direct Investment Rule has been something that has been brought up here, not brought up by my friend, so I'll initiate the discussion of that. That is the contention that in order to evade a regulatory limit on the amount of investment a savings and loan chartered in Arkansas could have invested in real estate, that there was the use of Mr. Ward as a straw co-purchaser of this property. That's the allegation that's out there, and there's been considerable discussion about that. What I would like to know from you, Mr. Thrash, is first of all, whether you were cognizant of any 6 percent limitation that existed at the time that the transaction was closed?

Mr. THRASH. No, sir, I was not.

Mr. BEN-VENISTE. Had you been involved in the representation of Arkansas' chartered savings and loans at any point prior to the closing of the IDC transaction?

Mr. THRASH. No, sir, I had not.

Mr. BEN-VENISTE. Did anyone discuss with you any problems that Madison Guaranty Savings & Loan was having in connection with this 6 percent direct investment limitation?

Mr. THRASH. No, sir, not at all.

Mr. BEN-VENISTE. Did you in any way, shape or form in connection with your representation feel that you were facilitating in some way some evasion of Arkansas State Regulations?

Mr. THRASH. Absolutely not.

Mr. BEN-VENISTE. Now did you have any conversation with Mr. Massey, who was then an associate of the firm, about any 6 percent limitation or any problem that Madison may have been having with respect thereto?

Mr. THRASH. No, sir.

Mr. BEN-VENISTE. Let me go back to this wet/dry issue again with you, Mr. Donovan. Mr. Lyon testified that he never agreed to move his brewery to the IDC property. Is that at least consistent with your knowledge in terms of any formal agreement made by Mr. Lyon?

Mr. DONOVAN. I have no knowledge of Mr. Lyon. I didn't even know he was involved in this at all.

Mr. BEN-VENISTE. So when the proposition was put to you in terms of the research to be done, it was more or less in hypothetical terms, although one would have expected there would be some basis for the hypothetical question to be asked, since it was costing somebody legal fees to do the work?

Mr. DONOVAN. Sure. Oh, sure, sure.

Mr. BEN-VENISTE. Similarly, the testimony from the Director of the ABC Board, is that a statewide board, the ABC Board in Arkansas or was it at that time?

Mr. DONOVAN. Yes, sir, it was.

Mr. BEN-VENISTE. That is the Board that regulated alcoholic beverages?

Mr. DONOVAN. That's correct.

Mr. BEN-VENISTE. Charles Singleton, who was then the Director of the ABC Board, testified that neither the Rose Law Firm nor the Governor's office made any effort to pursue the wet/dry question with the ABC. Do you have any reason to contradict or to think that Mr. Singleton was in error in any way in his testimony on the basis of your connection with this matter?

Mr. DONOVAN. No. As a matter of fact, that's consistent with the records that I have, and my recollection is that I don't recall ever filing any petition with the Board to apply for the—to have them adopt the minority position of the dissolved township theory and to render an opinion that that geographical area was indeed wet.

Mr. BEN-VENISTE. Never got that far?

Mr. DONOVAN. Never got that far.

Mr. BEN-VENISTE. So if I can summarize here the work that was done by the Rose Law Firm to your knowledge, Mr. Thrash and Mr. Donovan, it was on legitimate questions that lawyers are called upon to assist clients on that you were not asked to do anything improper, illegal, or untoward, and that you provided legal services to the best of your ability back 11 years ago?

Mr. DONOVAN. That's absolutely correct.

Mr. THRASH. Yes, sir.

Mr. BEN-VENISTE. I have nothing further.

Senator GRAMS. Thank you.

Mr. Giuffra.

Mr. GIUFFRA. Thank you, Senator.

Mr. Dover, in 1985, you were the primary attorney for the IDC in connection with the sale of this property to Madison Financial; is that correct?

Mr. DOVER. That's correct.

Mr. GIUFFRA. The IDC Chairman was a man named Brick Lyle?

Mr. DOVER. Yes.

Mr. GIUFFRA. And as far as you know, Mr. Lyle negotiated the sale of this property with Mr. Seth Ward?

Mr. DOVER. That's correct. The negotiations were largely between those two.

Mr. GIUFFRA. Was it your understanding that Mr. Ward was acting as an agent for Madison Financial?

Mr. DOVER. I really didn't know what hat he was wearing. He purported to, according to what Mr. Lyle told me. I don't believe I saw Mr. Ward personally until we were at the closing. Most of my information about the transaction—all of my information from the transaction came from the client, Rick Lyle, who would report that he talked with Seth Ward and Seth wanted to do this, that, or the other, and then we would amend the documents accordingly. And always hovering in the background were the banks that had to be reckoned with and had to be paid, and they had some input into the final structure of the transaction.

Mr. GIUFFRA. Was it your understanding, at least initially, that the purchaser of the property would be Madison Financial, with the backing of Madison Guaranty?

Mr. DOVER. I think the very first draft of the instrument—and I have to feel that this came again from Mr. Lyle—I think the very first draft of the instrument specified the purchaser as Madison, the S&L, but specifically said—or its designee or words to that effect—that would give it the right to kind of pick and choose how it was actually going to take the title.

Mr. GIUFFRA. Late in the negotiations, did you learn that part of the property would be deeded to Mr. Ward?

Mr. DOVER. Well, we certainly did by the time of closing because that's the way the deeds were drawn.

Mr. GIUFFRA. Do you know why the transaction was structured so that part of the land was deeded to Mr. Ward?

Mr. DOVER. No, sir.

Mr. GIUFFRA. Now the attorneys who represented Madison—Mr. Thrash was the attorney representing Madison; correct?

Mr. DOVER. Correct.

Mr. GIUFFRA. The meetings that you attended were with Mr. Thrash of the Rose Law Firm?

Mr. DOVER. I don't know that there were meetings so much as there were maybe some memos or short letters back and forth, transmitting revised drafts of documents and some telephone calls, is my memory.

Mr. GIUFFRA. Was it your recollection that Mr. Thrash attended the closing?

Mr. DOVER. Yes, that's my memory.

Mr. GIUFFRA. Now do you recall some unexpected issues at the closing?

Mr. DOVER. Well, there are always unexpected issues at closings. I've been to very few closings that things didn't pop up that hadn't been adequately dealt with or one party had a different recollection of what the agreement was, and, you know, little fires to put out. That's pretty standard for a closing.

Mr. GIUFFRA. But do you remember some unexpected glitch occurring at this particular closing?

Mr. DOVER. I don't remember a particular issue. I remember—my memory is it took us forever to get it closed, so I'm sure there were issues being discussed, is the reason it took so long.

Mr. GIUFFRA. You don't have a recollection of dealing with Mrs. Clinton in connection with this transaction?

Mr. DOVER. No, sir, I don't.

Mr. GIUFFRA. But you know Mrs. Clinton?

Mr. DOVER. Yes, I do.

Mr. GIUFFRA. Let's put that billing record back up, 29011. This billing record indicates that on December 6, 1995, Mrs. Clinton spoke with you and Mr. Ward for .3 of an hour, and then later on December 10th spoke with Mr. Ward and yourself for half an hour. Now by that point the deal had closed. Do you have any explanation for why you would have been speaking to Mrs. Clinton on December 6th and December 10th?

Mr. DOVER. Well, I've said about three times now I don't recall talking to her, so I certainly don't have any idea what I might have talked about had I, in fact, talked to her.

Mr. GIUFFRA. Let's put up another Rose billing record, 29008. Just bear with us for one second. Do you have it now? On November 11, 1985, Mrs. Clinton bills for half an hour for a conference with Seth Ward regarding purchase from Brick Lyle, and do you think it would be correct to assume that this call must have related to the IDC purchase, because Mr. Lyle was the Chairman of IDC?

Mr. DOVER. Well, it seems reasonable. I don't know anything factual about it.

Mr. GIUFFRA. I would also observe that on 11/20, 6 days later, Mrs. Clinton speaks to Mr. Ward and Mr. Hubbell, again this time is billed to the general account, not to the IDC account, but the most likely explanation is that this is all related to the IDC transaction, particularly given the reference to a purchase from Brick Lyle. Now am I correct, sir, that IDC ceased to exist after the sale of this property to Madison and Ward?

Mr. DOVER. Well, it ultimately ceased to exist, but it didn't cease to exist immediately following this sale.

Mr. GIUFFRA. Do you recall any other work that Rose did after the sale was completed?

Mr. DOVER. That Rose did?

Mr. GIUFFRA. Yes, as far as you are concerned.

Mr. DOVER. No, I'm not privy to what Rose would have done.

Mr. GIUFFRA. You don't recall speaking with anyone from Rose about a brewery or utility that was on the property?

Mr. DOVER. After the closing?

Mr. GIUFFRA. Yes.

Mr. DOVER. No, sir.

Mr. GIUFFRA. Let's put the August 1985 draft agreement on the Elmo. Mr. Dover, this agreement indicates—did you prepare this first draft, as far as you know?

Mr. DOVER. I think that's probably correct, yes, sir. I have a draft here. It's dated the blank day of August.

Mr. GIUFFRA. 1985.

Mr. DOVER. 1985?

Mr. GIUFFRA. Now that appears to be the first draft of the sales agreement.

Mr. DOVER. Yes.

Mr. GIUFFRA. Do you think you prepared this first draft of the sales agreement?

Mr. DOVER. I think that's probably right.

Mr. GIUFFRA. Mr. Thrash, you would agree that Mr. Dover in all likelihood prepared the first draft?

Mr. THRASH. Yes, I think Mr. Dover prepared the first draft of this agreement.

Mr. GIUFFRA. Focusing on the underlined, highlighted provision of the agreement which says, "'Madison' which reference shall include any affiliate of Madison to whom Madison might elect to assign its rights hereunder." So the assignment provision in this initial draft is limited to Madison or any affiliate of Madison; is that right, Mr. Dover?

Mr. DOVER. That's the way it reads.

Mr. GIUFFRA. Let's put Rose billing record 28979 on the Elmo. It's useful in looking at the agreements to also compare the billing records. Mr. Thrash, this indicates that on August 6, 1985, you reviewed the contract for sale which would have been this first document that was prepared by Mr. Dover.

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. On the 8th you had a telephone call with Mr. Ward and you made some changes in the agreement, and you had a telephone conference on the 9th with Mr. Dover, and then you had some correspondence to all parties. Does that appear to be correct?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. Now let's put the August 9 letter that Mr. Thrash sent to Mr. Dover on the Elmo. Do you recall sending a revised draft back to Mr. Dover?

Mr. THRASH. Yes. Well, I don't recall but this is the revised draft.

Mr. GIUFFRA. This appears to be a revised draft?

Mr. THRASH. Yes, that's correct.

Mr. GIUFFRA. If you could just turn to the second page, does this document appear to have been prepared at the Rose Law Firm, as far as you can tell? The typeface is different than the initial document that Mr. Dover sent to you.

Mr. THRASH. What happened is that—we would have scanned in Mr. Dover's original document, made the changes, blacklined the changes, and sent it back to him.

Mr. GIUFFRA. So this would reflect your changes to Mr. Dover's draft?

Mr. THRASH. That's correct.

Mr. GIUFFRA. If we could turn just to the second page of the document, there's a little code down on the right hand bottom margin

where it says 1627V, and that's a word processing code at the Rose Law Firm, presumably?

Mr. THRASH. I believe that's correct.

Mr. GIUFFRA. In this draft which we'll describe as the August 9th draft, again looking to the first page of the agreement, it says again, in terms of the assignment provision, Madison can assign its rights under this agreement to any affiliate of Madison, but that's the only assignment provision that's in the agreement; right?

Mr. THRASH. That's the assignment provision that's on the first page there.

Mr. GIUFFRA. Yes. Let's put Rose billing record 28979 on the Elmo. Now it appears that on August 19th you had a telephone conference with Mr. Dover and then you also met with Mr. Ward on the 19th, Mr. Thrash. Does that seem correct?

Mr. THRASH. That's what the billing records reflect.

Mr. GIUFFRA. We don't know how much time you billed because we don't have the backup billing memorandum.

Mr. THRASH. I have my backup timesheets to indicate how much time I spent on those.

Mr. GIUFFRA. Do you know how much time you spent on the 19th on the IDC matter?

Mr. THRASH. They're in my billing records, I think 2 hours.

Mr. GIUFFRA. So you would have spent, your best guess is, 2 hours on the 19th on the IDC matter?

Mr. THRASH. Yes, sir, but it's in those billing records, and I believe it is 2 hours.

Mr. GIUFFRA. We have a draft agreement, this is the August 19 draft. Let's put that up on the Elmo. This draft, Mr. Dover, it's got your handwriting on the top?

Mr. DOVER. No, that is not my handwriting. It is my initials and somebody put up there "DDD marked notes," is that what you are reading?

Mr. GIUFFRA. Yes, sir.

Mr. DOVER. Some of it is my handwriting throughout the document but that's not my handwriting at the top.

Mr. GIUFFRA. This is a draft that you would have marked up?

Mr. DOVER. That's right.

Mr. GIUFFRA. This doesn't appear to be a draft that was prepared at your law firm, does it?

Mr. DOVER. I'm not that good on typefaces. It looks a whole lot like this first type except—the first draft that you asked me about, except it looks like the type is larger in this one.

Mr. GIUFFRA. Well, maybe Mr. Thrash can help us out.

On the second page of this August 19, 1985 draft on the second page in the lower right-hand corner, we again see this code, 1627V. Do you see that?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. So would you estimate that this was probably prepared at the Rose Law Firm, this draft?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. Now if we just would look at the assignee clause in the first paragraph, it states that, "Madison" which reference shall include any entity or individual to whom Madison might elect to assign its rights hereunder." So the assignee clause now in-

cludes, previously it had just included Madison or an affiliate, now it includes Madison or any entity or individual that Madison might wish to assign its rights. That's a change that's made in a draft that was prepared at the Rose Law Firm. Does that appear to be correct, Mr. Thrash?

Mr. THRASH. Yes, sir, I believe that is correct.

Mr. GIUFFRA. Now this is an important provision because this would authorize Madison to assign its rights in the property to Mr. Ward since he was an individual. Couldn't have done that under the prior drafts; correct?

Mr. THRASH. This changes the assignability clause to an individual as opposed to an affiliate of Madison.

Mr. GIUFFRA. So prior to this time you could not have assigned the property to Mr. Ward; right?

Mr. THRASH. Well, it was a cash transaction. I don't think the assignability was really that big of an issue, but Mr. Ward I don't think would have been considered an affiliate.

Mr. GIUFFRA. OK. This change, this August 19th draft is prepared the same day you met with Mr. Ward; isn't that right?

Mr. THRASH. Was it prepared that day?

Mr. GIUFFRA. The draft says across the top August 19th; right?

Mr. THRASH. That appears to be the date on the document.

Mr. GIUFFRA. On the document?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. And you met with Mr. Ward on the 19th; correct? That's what your billing records show.

Mr. THRASH. Yes, that's correct.

Mr. GIUFFRA. Do you know whether you made this change in the draft after meeting with Mr. Ward?

Mr. THRASH. Counsel, what I think happened is on the 9th I sent a draft agreement over to Mr. Dover which contained the affiliate language. I believe I was getting tied up in other transactions and I asked Dave Thomas to come on and assist me in this transaction. Dave came on, he made some changes, he had several telephone conferences with Mr. Dover, I believe one with Seth Ward. I am speculating a little bit because I don't remember Mr. Ward contacting us, asking us to make this change, but I think that's probably what happened, Mr. Ward asked us to make this change and probably asked Dave Thomas and he made that change.

Mr. GIUFFRA. Thank you.

Senator GRAMS. Thank you, Mr. Giuffra.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Mr. Dover, you testified earlier that in your view, the contract for sale between Madison and IDC reached in the fall of 1985 was the result of what you called arm's length negotiation; is that correct?

Mr. DOVER. That's correct.

Mr. KRAVITZ. The Committee has information, in fact, that the initial asking price put out there by IDC was \$12 million. Is that consistent with your memory?

Mr. DOVER. No, sir, I don't have any memory of that number.

Mr. KRAVITZ. Well, the board in the report at page 26 indicates Tucker initially asked \$12 million for the property, and I just men-

tion that as corroboration of your testimony previously that a final sale price of under \$2 million certainly does seem as if there was some serious arm's length negotiations. And that is consistent with your memory?

Mr. DOVER. My memory is the same as it was a few minutes ago, that this was a hotly negotiated price, a lot of back and forth between Mr. Lyle and between Mr. Ward, with a lot of input by the banks. The banks were as interested as IDC was in getting that purchase price up.

Mr. KRAVITZ. So this certainly was not a situation where a purchase price was inflated artificially; is that right?

Mr. DOVER. Inflated?

Mr. KRAVITZ. Correct.

Mr. DOVER. No, sir.

Mr. KRAVITZ. Not at all; right?

Mr. DOVER. No, sir.

Mr. KRAVITZ. Let me ask you some questions about the closing itself which occurred in early October 1985. What documents were at play at the closing? What documents changed hands?

Mr. DOVER. The deeds and the money. There were three deeds, as I recall. There was a deed to Mr. Ward and a deed to one of the Madison entities, and both of those were from what we've been referring to as IDC. Then there was a deed from ISC, which was Industrial Services Company. That was a wholly-owned subsidiary of IDC, and I think that deed ran to Mr. Ward.

Mr. KRAVITZ. Mr. Dover, was there anything in any of those documents that changed hands at the closing in early October 1985 which indicated that there was anything fraudulent or untoward about the acquisition?

Mr. DOVER. Well, Counsel, somebody a while ago when asking the question said please don't take offense at this if we imply that you've been guilty of fraud and deceit and crookedness and everything else. I don't know what the intent of your question is. No, sir, I would not have closed a transaction that had fraud written all over it.

Mr. KRAVITZ. I appreciate your comment, and certainly the intent of my question is not to imply that you would have put up with anything that indicated that there was fraud. Actually, to the contrary, what I was trying to establish was that there was nothing in those documents which would have indicated to you or to anyone else that anything fraudulent was going on with this acquisition, and I take it that is fully consistent with your testimony.

Mr. DOVER. Absolutely not, there was nothing.

Mr. KRAVITZ. I'm sorry. Go ahead, Mr. Dover.

Mr. DOVER. There was nothing in any of the documents that indicated we were consummating a fraudulent transaction.

Mr. KRAVITZ. Had there been anything in those documents, you would not have had any part in that transaction; is that correct?

Mr. DOVER. That's correct.

Mr. KRAVITZ. Mr. Thrash, was there anything in any of those documents that you saw at the time of the closing on October 4, 1985, which indicated to you that there was anything fraudulent or untoward about that transaction?

Mr. THRASH. No, sir.

Mr. KRAVITZ. Was there anything which indicated that Mr. Ward was being used as a so-called straw man in this transaction?

Mr. THRASH. No, sir, I would have had no knowledge of that, no.

Mr. KRAVITZ. And just to be clear, I think Mr. Ben-Veniste went over this earlier, Mr. Thrash, you had no involvement relating to the IDC acquisition between August 20, 1985 and September 30, 1985; is that correct?

Mr. THRASH. That is correct.

Mr. KRAVITZ. So did you have any knowledge as of October 4, 1985, of any of the allegedly fraudulent side agreements between Mr. McDougal and Mr. Ward?

Mr. THRASH. No, sir.

Mr. KRAVITZ. Had you had any such knowledge, would you have participated in that acquisition?

Mr. THRASH. Absolutely not.

Mr. KRAVITZ. To your knowledge, did anyone else at the Rose Law Firm have any knowledge of Mr. Ward's being used as a straw man as of the time of the closing in early October 1985?

Mr. THRASH. No, sir.

Mr. KRAVITZ. You were the person at the Rose Firm working on that matter; correct?

Mr. THRASH. That's correct.

Mr. KRAVITZ. We heard testimony earlier today from Mr. Davis Fitzhugh, who told the Committee about a transaction that he was involved in following Madison's purchase of the IDC property when Mr. Fitzhugh purchased from Madison the Levi Strauss warehouse. Are you familiar with Mr. Fitzhugh's testimony, Mr. Thrash?

Mr. THRASH. No, sir, I am not.

Mr. KRAVITZ. Let me just ask you this. Did you have any involvement in the transaction between Mr. Fitzhugh and Madison—

Mr. THRASH. No, sir.

Mr. KRAVITZ. I'm sorry, but just to be clear, relating to the Levi Strauss warehouse?

Mr. THRASH. No, sir, I did not.

Mr. KRAVITZ. To your knowledge, did anyone at the Rose Law Firm have anything to do with that transaction?

Mr. THRASH. Not to my knowledge.

Mr. KRAVITZ. Mr. Chairman, in regard to this, I just point out that the Pillsbury Report at page 53 stated, "The investment in Castle Grande has been questioned on numerous grounds, but most of these have nothing to do with the Rose Law Firm."

And I think that we've established that through the testimony of Mr. Thrash relating both to what happened at the closing and also to the lack of involvement by Rose Law Firm attorneys during the period between late August 1985 and the end of September 1985.

That's all we have. Thank you.

Senator GRAMS. Thank you, Mr. Kravitz.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Senator.

I'm going to ask the gentlemen to respond specifically to the internal activities associated with the Rose Law Firm and how you communicated internally to insure that you didn't have a conflict of interest relative to one lawyer accepting a case where there may be a conflict with another lawyer who is already involved in a com-

mitment on behalf of the law firm. At this particular timeframe, 1984, 1985, 1986, how many lawyers, including the associates, or the partners, were associated with the firm, about, active?

Mr. DONOVAN. Twenty to 30 lawyers at the firm at that time, maybe more than that. I don't know, Senator. I would have to look at a letterhead.

Senator MURKOWSKI. Was there any kind of a monthly meeting or weekly meeting to go over internal affairs within the Rose Law Firm?

Mr. DONOVAN. The firm had and continues to have regular partners meetings that are usually monthly.

Senator MURKOWSKI. What takes place at those meetings in the sense of exchange of information? Is it to discuss potential conflicts or is it to talk about business or salaries or any number of things associated with the normal events of a law practice?

Mr. DONOVAN. It can cover anything. However, on your question with regard to conflicts, we have a conflicts committee, and what essentially happens is this, Senator. Anytime a new client comes into the firm, the partner that brings the client into the firm will do what is called a conflicts check, and he or she will first of all send out a—in those days a paper memorandum, describing the representation of the client and asking if anyone knows of any conflicts. We do it by E-mail now.

Also, there is a computer check. We have a conflicts database, and those names can be run through the computer, and the computer will tell us if it comes up. If another lawyer thinks that there is a conflict, he tells that lawyer so. And if those two lawyers disagree on whether or not there is a conflict which should result in the—

Senator MURKOWSKI. During that timeframe, was this system working?

Mr. DONOVAN. Sure.

Senator MURKOWSKI. Were there discussions concerning potential conflicts with Madison S&L?

Mr. DONOVAN. Do you mean in the—in what regard are you talking about?

Senator MURKOWSKI. Potential conflicts of the firm as far as its relationship with representing Madison, representing other aspects associated with Madison's dealings. My question is a general one. Were there discussions involving potential conflicts of interest?

Mr. DONOVAN. I was an associate then, not a partner, but I am sure that when the Madison client came to the firm, that those conflict procedures which I tried to outline to you were followed.

Senator MURKOWSKI. But my question is specific in the sense, do you have any recollection or knowledge of any discussion coming up about potential conflicts associated with Madison?

Mr. DONOVAN. No, I do not, but I again was an associate at that time and not a party.

Senator MURKOWSKI. I wonder if your colleague would have any?

Mr. THRASH. Senator, I don't remember.

Senator MURKOWSKI. So you don't know either way?

Mr. THRASH. That's correct.

Senator MURKOWSKI. But you were in the firm during that time period 1984, 1985, 1986?

Mr. THRASH. Yes, sir.

Senator MURKOWSKI. Did you keep minutes of your discussions, have a secretary there internally within the Rose Law Firm that highlighted the discussions of the partners and associates during the monthly meeting?

Mr. THRASH. I believe we did, but Senator, at a monthly meeting we wouldn't discuss conflict issues.

Senator MURKOWSKI. When would you discuss confidential things like potential conflicts?

Mr. THRASH. If there was an apparent conflict that one attorney raised regarding the representation of a particular client, then it might go to the conflicts committee, if there was an issue about it, or if the two attorneys couldn't resolve it.

Senator MURKOWSKI. To your knowledge, this matter of Madison didn't go to the conflict committee?

Mr. THRASH. I just don't recall. To my knowledge, no.

Senator MURKOWSKI. You don't know, then?

Mr. THRASH. That's correct, I don't know.

Senator MURKOWSKI. I gather, Mr. Thrash doesn't know either—or excuse me, Mr. Donovan, is that correct, you don't know or you know it didn't?

Mr. DONOVAN. No, I do not know, nor am I aware of any conflict the firm had taking on these Madison matters back in 1985 or 1986.

Senator MURKOWSKI. I didn't ask you if you knew of any. I asked you if any discussion had come up with regard to conflict. Did any discussion come up with regard to Seth Ward and his role in representing Madison? I'm questioning both the lawyers for the firms.

Mr. DONOVAN. In what regard, Senator? I don't understand the question.

Senator MURKOWSKI. In regard to a potential conflict that the firm may have in general terms. We all know what a conflict is.

Mr. DONOVAN. Seth Ward was not a client of the firm—

Senator MURKOWSKI. So the answer is no, then?

Mr. DONOVAN. Seth Ward is not a client of the firm, therefore there would have been no discussion as to whether or not there would have been a conflict in representing Seth Ward at the time.

Senator MURKOWSKI. But he was an agent for Madison as vice president?

Mr. DONOVAN. That's correct.

Senator MURKOWSKI. You knew him as vice president of what?

Mr. DONOVAN. I think he was Madison Financial, a subsidiary.

Senator MURKOWSKI. And Madison Financial was a subsidiary of Madison S&L?

Mr. DONOVAN. That's correct.

Senator MURKOWSKI. Could he contract in your opinion as a vice president for Madison S&L?

Mr. DONOVAN. Under general principles of agency, it depends on whether he had the authority. And of course, if he contracted outside that authority, it would depend on whether or not he had the apparent authority, whether that contract would be enforceable.

Senator MURKOWSKI. Whether it was authorizable—Madison—excuse me, Rose, to your knowledge, was not of counsel to either

the S&L in any manner or form as corporate counsel or to the area that Seth Ward had a responsibility for Madison investment?

Mr. DONOVAN. We represented Madison in a few discrete matters. We were not their general counsel. They had their own general counsel in Little Rock who dealt with regulatory matters and all other matters.

Senator MURKOWSKI. Did the IDC transfer, in other words the eventual movement of properties from IDC to Madison or Ward, come up in your recollection to any issue of potential conflict?

Mr. THRASH. Not that I recall, Senator.

Senator MURKOWSKI. You're aware, of course, of the relationship that Seth has with Hubbell, who was a senior partner in your firm?

Mr. THRASH. Yes, sir.

Senator MURKOWSKI. You're aware that Ward has been described as kind of a shell in purchasing land from the IDC and Castle Grande and Rose was involved in drafting some of these agreements?

Mr. THRASH. No, Senator, I don't think that's correct.

Senator MURKOWSKI. Well, I have a copy of the IDC billings here, and these happen to be Mrs. Clinton's IDC billings from November 14, 1985 to June 10, 1986, and it constitutes 29.5 hours of billing for \$3,774.75, and it's my understanding that this represents, I don't know if the lawyers have this in front of them, but the indication here is that these were services performed in association with the activities of IDC moving through Madison, funding Seth Ward and Seth reselling those properties. You're suggesting that Rose did not do this?

Mr. THRASH. Senator, I'm not sure I followed your question. Mrs. Clinton was not involved in the transaction that I worked on regarding Madison's acquisition of the——

Senator MURKOWSKI. So you don't know anything about these billings that are associated with Madison? Because they were done on behalf of Madison, as I understand it.

Mr. THRASH. The answer to your question is I don't——

Senator MURKOWSKI. It's on the monitor there.

Mr. THRASH. Yes, sir. I don't have any knowledge regarding what Mrs. Clinton worked on or did not work on, although I do know she did not work on the IDC transaction in which Madison purchased property from IDC.

Senator MURKOWSKI. You have since heard about the allegation that there was a personal drafting of an option agreement to convey 22.5 acres from Seth Ward to Madison and that there's reason to believe at least she had a role in drafting that?

Mr. THRASH. I have heard those statements, yes.

Senator MURKOWSKI. But you're not aware of that?

Mr. THRASH. I was not involved in that, no, sir.

Senator MURKOWSKI. Are you aware that the examiners told this Committee yesterday that back in 1984 after an examination of Madison S&L, that Madison was put on their alert list because of irregularities and insider transactions and dealings and they were put under a compliance requirement that mandated that Madison report its progress in making these corrections to the Federal Home Loan Bank Board examiners?

Mr. THRASH. No, sir, I was not aware of that.

Mr. DONOVAN. I was not aware of that.

Senator MURKOWSKI. Those kind of things aren't discussed internally within your law firm as you recognize that you have some representation as a law firm representing Madison?

Mr. DONOVAN. Senator, the Federal Home Loan Bank Board Reports of Examination are confidential.

Senator MURKOWSKI. I understand that.

Mr. DONOVAN. We would not be privy to that. We only represented Madison in a few discrete matters. We were not their regulatory counsel. We were not their general counsel. That is not something that the Rose Law Firm would have been privy to, sir.

Senator MURKOWSKI. Well, I'm not so sure of that, knowing the general relationship of law firms on behalf of their clients and how a conversation spreads around a community relative to any difficulties that a financial organization may be having at a given time or another.

But it would seem to me that since there was such a close relationship between McDougal and services rendered by the firm, and in view of the testimony that we heard this morning from a vice president of Madison S&L concerning the type of loans that were being arranged and the obvious kickbacks, that indeed, these weren't everyday, above-the-board business dealings. These were rather extraordinary extensions of what appeared to be what it actually was, and that's some kind of a charade to inflate land prices and generate activity from Madison, and the very fact that this last loan was made in an expedited timeframe to insure that the place was cleaned up before the examiners, you know, I just find it extraordinary that the Rose Law Firm did not have an inkling in Little Rock that there were problems at Madison Guaranty, particularly in view of the fact that there were these representations and billings that had been ongoing for some time.

I guess I asked the same question yesterday, but it seems to be more perplexing today, gentlemen, how the law firm could have been void of any knowledge of the corruption associated with the Castle Grande land scheme? I have been in business, I know the conversations that take place at the banking levels and legal levels, and this seems such a corrupt process, these scams. Some people are very greedy, they want to get in on them, but there's certainly no question of the ability of people to pick up on them and recognize that somebody is making an extraordinary return for us to receive virtually no information.

No recollection on whether or not there were discussions of conflict within the law firm on the potential client relationship, despite the examiner's discussion yesterday that the corruption was obvious, I find very disturbing, and particularly in view of the straw man relationship with Seth Ward who was the father-in-law of the law partner which was your senior partner, Webster Hubbell. I am not going to ask you whether you talked to Webster Hubbell about it, but it would seem to me that because of the close relationship that existed in that law firm, the fact that it wasn't a large firm, a relatively small group, that you would have an opportunity to either overhear or question dealings that obviously affected one of your senior partners.

We're obviously dealing with well-educated, intelligent lawyers, and you folks act like you wouldn't know a scam if it hit you in the rear end. So that's the extent of my observation, Mr. Chairman.

Mr. THRASH. Senator, I would like to comment on your response. The transactions that were called in question, the Rose Law Firm had no involvement in any of those transactions that have been called into question.

Senator MURKOWSKI. Well, I dispute that because, if you look at this billing record, these are transactions involving the Rose Law Firm and Madison relative to the purchase of the IDC properties which evolved into Castle Grande during the period that Madison was under scrutiny and the examiners acknowledged there was a scam going on, and they were making illegal loans during the entire time of 1990—well, when they were in excess of their 6 percent lending limit on the basis of their net worth.

I don't know what kind of a conclusion you come up with, but I can come up with one that they were an extended, illegal operation during that time; and that was not State law, that was Federal law.

Mr. THRASH. Senator, we had no involvement in the transactions that have been called into question. We did not work on them and we had no involvement in those.

Senator MURKOWSKI. And you had no knowledge of any of this going on?

Mr. THRASH. No, sir.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Dover, now maybe you see why we keep asking you these questions again and again, because Senator Murkowski's just alleged a scam.

Now, Mr. Thrash, as I understand it—

Senator MURKOWSKI. I alleged a scam associated with the remarks of the bank examiner yesterday who acknowledged there was a scam.

Senator SARBANES. Well, I'm going to pursue that—

Senator MURKOWSKI. So I want to make sure we have reference to where the source came from.

Senator SARBANES. Mr. Thrash, when you went to the closing, you had no knowledge of any scam, did you?

Mr. THRASH. No, sir.

Senator SARBANES. Mr. Dover, when you went to the closing between IDC and Madison, you had no knowledge of any scam?

Mr. DOVER. No, sir, I did not.

Senator SARBANES. I want to ask both Mr. Thrash and Mr. Donovan, the Rose Law Firm were not the primary counsel for Madison, were they?

Mr. DONOVAN. No, Senator, we were not.

Senator SARBANES. In fact, as you perceived it, in the total sphere of legal work done for Madison, what Rose did for Madison was very small. I mean, it was certain particular discreet items; is that correct?

Mr. DONOVAN. Correct, Senator, very minimal representation.

Senator SARBANES. Within the Rose universe of billings, I have looked at these figures and people seem to set upon them, but they don't seem to me to be large billings in terms of a law firm's cli-

ents. How did Madison rank within the Rose Firm in terms of its billings? Is this a large client, a small client? Are these large amounts of billings? The end of the year, if you saw billings like this, would you put them well up on the list of your clients, or well down on the list of your clients?

Mr. THRASH. Senator, this was a very small client of the firm.

Mr. KRAVITZ. Mr. Donovan, a couple of quick questions. I think it was brought to your attention earlier on document DKSX 29002, one of the billing records—do you have that in front of you?

Mr. DONOVAN. They are all out of kilter, I'm sorry.

Mr. KRAVITZ. I think we can have a copy brought down to you. Do you have it, Mr. Donovan?

Mr. DONOVAN. Yes, sir.

Mr. KRAVITZ. On this document there is an entry for Mrs. Clinton on November 26, 1985—

Mr. DONOVAN. Yes, sir.

Mr. KRAVITZ. —where she bills 1 hour for a number of tasks including a conference with Seth Ward, conference with T. Thrash, conference with W. Hubbell?

Mr. DONOVAN. Yes, sir.

Mr. KRAVITZ. I believe you were asked previously whether this date, November 26, 1985, that was before the time that you started doing your legal research; is that correct?

Mr. DONOVAN. That's correct.

Mr. KRAVITZ. I believe that it was posited to you that perhaps the fact that Mrs. Clinton had a conference with Mr. Ward before the time that you had begun your legal research might indicate that Mrs. Clinton was, in fact, talking to Mr. Ward, not about regulatory or utility issues, but rather about the acquisition of IDC. I want to bring to your attention another billing record which may actually shed some light on this, DKSX 29011. I do not know whether anybody brought that down to you while we were—

Mr. DONOVAN. Yes, sir, I have that.

Mr. KRAVITZ. You have that document?

Mr. DONOVAN. Yes.

Mr. KRAVITZ. Who is RDT, is that Davis Thomas?

Mr. DONOVAN. Yes, sir.

Mr. KRAVITZ. Is there an entry for Mr. Thomas—first of all, who was Mr. Thomas back in 1985?

Mr. DONOVAN. He was a fellow associate at the firm.

Mr. KRAVITZ. Is there an entry for Mr. Thomas on October 18, 1985?

Mr. DONOVAN. Yes, sir, he did research on what approvals, permits, et cetera, are necessary to operate sewer and water facilities, multiple telephone conferences with State agencies, a memo to Webb Hubbell or W. Hubbell.

Mr. KRAVITZ. Do you also have in front of you DKSX 29010, which is the January 31, 1986 bill to Madison Guaranty relating to matter No. 5, IDC?

Mr. DONOVAN. Yes, sir.

Mr. KRAVITZ. Do you see, about halfway down in the description of the services rendered, where it says, "Research on what approvals, permits, et cetera, are necessary to operate sewer and water

facilities; multiple telephone conferences with State and county agencies; memo about utility status”?

Mr. DONOVAN. Yes, sir, I see that.

Mr. KRAVITZ. Does that appear to refer back to the October 18, 1985 entry from Mr. Thomas?

Mr. DONOVAN. Clearly it does.

Mr. KRAVITZ. Now do these two documents shed any light on what Mrs. Clinton may very well have been talking to or may have had a reason to talk to Mr. Ward about in November 26, 1985?

Mr. DONOVAN. Yes, clearly the idea of the regulation of the utility had come up before then and before my research began in, I think, late December or early January 1986.

Mr. KRAVITZ. So it would be a reasonable inference to draw, that on November 26, 1985, Mrs. Clinton may well have been talking to Mr. Ward about the regulatory and utility issues that Davis Thomas had been researching back in October 1985?

Mr. DONOVAN. Sure.

Mr. KRAVITZ. And the fact that Mrs. Clinton's conversation in November occurred before you began to do legal research on some of those same issues does not in any way indicate that Mrs. Clinton was talking to Mr. Ward about the acquisition of the IDC property?

Mr. DONOVAN. Oh, sure, I think that's correct.

Mr. KRAVITZ. Thank you. That's all I have.

Senator SARBANES. Mr. Chairman, we received a letter from Mr. Clark, I think, making a very important clarification and I think that letter should be included in the record.

The CHAIRMAN. Mr. Clark's letter will be included in the record.

Senator SARBANES. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Donovan, I want to understand this. You were just asked whether, based on this entry in October 1985, indicating that Mr. Thomas had done some work on this issue about the water and sewer hookup, that you are now speculating that the later calls, a dozen or so calls between Mrs. Clinton and Mr. Ward, were related to that utility hookup issue?

Mr. DONOVAN. Well, no, I think—at least what I thought I was answering was that that would—that a logical inference of Mr. Davis Thomas' 10/18/85 entry would be that Mrs. Clinton's entry of 11/26/85 conference with Seth Ward, Tom Thrash, and Webb Hubbell would logically—the logical inference would be that was about the utility issue.

Mr. CHERTOFF. Now that utility was supposed to be hooked up to something; right, Mr. Donovan?

Mr. DONOVAN. I would think so.

Mr. CHERTOFF. They didn't just build the utility to put it out in the middle of a meadow and let it sit there; right?

Mr. DONOVAN. I would not think so.

Mr. CHERTOFF. Wasn't the issue about what kind of permits and what kind of authority was necessary to put up utility hookups to a residential development?

Mr. DONOVAN. I don't know the answer to that. I mean, I looked back at the memo to see if there was any background information in my memorandum which would given some insight into exactly what the plans of the client were, and all I say in the body of the

memorandum is, you know, that they want to have a utility and to whom is it—what regulations are required?

Mr. CHERTOFF. Let's apply some common sense. As a common sense matter, Mr. Donovan, will you agree with me that the purpose of getting permission to hook up the utility was to hook it up to something where people would live or work?

Mr. DONOVAN. I think that's true. However, it is my understanding that—

Mr. CHERTOFF. Is there any doubt in your mind that what they were looking to do was to hook it up to places where people live and work?

Mr. DONOVAN. This utility existed long before the IDC transaction, however. In fact, IDC had a wholly-owned subsidiary which owned this utility.

Mr. CHERTOFF. The purpose of the research you did was not to go to the library to answer law review questions, it was to get an answer to Seth Ward and to the people who had the property about what would be necessary to hook it up to buildings that people would live in and work in; right, that was the point of it?

Mr. DONOVAN. I can't agree with that. I don't know that that's the case. For all I know, the utility was hooked up. They were operating and their question was, should we be regulated, for all I know.

Mr. CHERTOFF. It was hooked up to what was projected to be a housing development in that IDC property; isn't that right?

Mr. DONOVAN. I would assume so.

Mr. CHERTOFF. And that is a housing investment that the whole country is now known to love called Castle Grande. Now using this power of inference you have just employed earlier in response to Mr. Kravitz's questions, is it a fair inference that, in the course of multiple discussions during October, November, and December between Hillary Clinton and Seth Ward about the regulations applying to hooking up a utility in the property in which they are developing, Castle Grande, that there would have been discussion about the fact that there was going to be a housing development there? Pretty fair inference; right?

Mr. DONOVAN. I suppose so. I just wasn't privy to that and I don't know.

Mr. CHERTOFF. Let me go to you, Mr. Thrash. The question was raised by Senator Murkowski about the involvement of the firm in some of the questioned loan transactions, and in particular the original purchase of IDC with the straw man where—you know what a straw man is; right?

Mr. THRASH. I am not sure what your interpretation of straw man is.

Mr. CHERTOFF. I will make it clear to you. A straw man is a situation in which you park some of the property in someone else's name, they don't put up the money, they don't take the risk. They only have one function which is to hold your property in their name in order to conceal the fact that you are the true owner of the property. I mean, the words "straw man" in that sense.

You understand that what the examiners have looked at and found with respect to this transaction is that Seth Ward was the owner of property in name only. He didn't put up the money out

of his own pocket, it was nonrecourse so he was not at risk, and Madison Financial had an option any time they wanted to to get that property back. You know that, don't you?

Mr. THRASH. Do I understand that that's what someone has found? No, sir, I do not.

Mr. CHERTOFF. You don't know that?

Mr. THRASH. No, sir, I do not.

Mr. CHERTOFF. The transaction in which the sale was made from the IDC to Madison Financial, Mr. Dover, you represented the IDC; is that right?

Mr. DOVER. Correct.

Mr. CHERTOFF. I mean, in fairness we ought to separate you out from the other two gentlemen at the table because your client was the IDC and you had no reason whatsoever to know or care about what was going on at Madison Financial; right?

Mr. DOVER. You are right.

Mr. CHERTOFF. So happily you have no reason to be anything but oblivious to all of this.

Mr. Thrash, who was your client?

Mr. THRASH. Our client was Madison Guaranty, Madison Financial.

Mr. CHERTOFF. You were at this closing. Was Mr. Ward there?

Mr. THRASH. Mr. Chertoff, I do not have an independent recollection of being at that closing. My knowledge of that closing is based upon the documents that I have reviewed, and I show that I was at that closing.

Mr. CHERTOFF. Do you know who represented Mr. Ward at that closing?

Mr. THRASH. I am not sure that anyone represented Mr. Ward at that closing.

Mr. CHERTOFF. Do you remember that there was a transaction in which a portion of this property was assigned to Mr. Ward and you were present for that?

Mr. THRASH. I remember at the closing, based upon the documents that I have reviewed, that Mr. Ward acquired a portion of the IDC property.

Mr. CHERTOFF. Now that would have been a pretty significant change in the transaction from the original deal the way you had it structured as of your August 9, 1985 letter to Mr. Dover; right?

Mr. THRASH. As of the August 20th corporate resolutions which I prepared for Madison Financial to acquire all of it for a million 750, that was a change, yes, sir.

Mr. CHERTOFF. That's something you should have noticed; right?

Mr. THRASH. At the closing, yes, sir.

Mr. CHERTOFF. On August 19th, there was a change in the agreement which the Rose Law Firm prepared which all of a sudden created the possibility that Madison might assign its rights, not merely to an affiliated company, but to an entity or individual even if it was unaffiliated; right?

Mr. THRASH. Yes, sir.

Mr. CHERTOFF. And you understand that that change, although it looks like a little technical change, the significance of that change is that it allows, as part of the purchase, the possibility that Madison is going to assign some or all of its rights to some-

body who is not an affiliate of Madison, and that the agreement will then be kicked in to cover this other individual; right?

Mr. THRASH. That agreement would have allowed Madison to assign whatever interests it might have in a portion or part of the property to someone else. Although they probably didn't need that, Mr. Chertoff, because it was a cash transaction, they could have done that anyway.

Mr. CHERTOFF. But someone felt the need to put it in the agreement; right?

Mr. THRASH. That is correct. I think probably we were asked to put it in.

Mr. CHERTOFF. Now, you are telling us you didn't put it in there; right? You said it was Mr. Thomas who did it?

Mr. THRASH. I am saying I don't recall. I have looked at the time entries and it makes sense that that may have happened, Mr. Thomas may have put it in. I may have put it in, I just don't recall.

Mr. CHERTOFF. What level of associate was Mr. Thomas in 1985?

Mr. THRASH. He was probably a 3-year, third-year associate.

Mr. CHERTOFF. You were supervising him on this transaction?

Mr. THRASH. I guess you could say that, yes, sir.

Mr. CHERTOFF. Do you think it was likely he was making significant changes in the structure of a transaction without running it by you?

Mr. THRASH. Mr. Chertoff, what I just said, that was not a significant change, I don't think it was a significant change at all. They could have done it without it. I just don't think that was a very significant change at all.

Mr. CHERTOFF. So you are telling us you think Mr. Thomas may have done this just by himself?

Mr. THRASH. He may have, or he may have talked to me about it. I just don't recall.

Mr. CHERTOFF. But you don't remember?

Mr. THRASH. No, sir.

Mr. CHERTOFF. So far as you are telling us that the Rose Law Firm had no involvement in any of the criticized transactions, you have to agree with me that this document, this agreement and these drafts of agreements, were part of the indispensable ingredients of these transactions. This was the paper that let that transaction happen; right?

Mr. THRASH. The criticized transactions, as I understand it, were transactions involving loans and sales of this property subsequent to the acquisition of it by Madison. The actual acquisition of it by Madison was not one of the questioned loans, I don't think.

Mr. CHERTOFF. I think you misunderstand, Mr. Thrash, because I think for weeks now we have had evidence in the record about an examiner's report that described this very transaction, the initial acquisition as a sham transaction, as a fictitious purchase in which Mr. Ward was not really the owner of the property because he didn't put up the money, he didn't put himself at risk. And as soon as Madison Financial Corporation wanted to sell that property, they had the ability to get it back out again.

So that all he did was he held it, kind of like he was holding it for somebody else, but it wasn't his own property. That is one of the critical transactions.

Senator SARBANES. Are you asserting that Clark yesterday, the examiner, said the transfer of this property from IDC to Madison was a problem transfer?

Mr. CHERTOFF. I am asserting that the examination report, which we have put in, we have been dealing with for weeks, that original report from the February examination, identifies the IDC purchase by Madison and Seth Ward, that Seth Ward's purchase was a sham transaction, that it was a transaction with no economic consequences. He didn't put up the money, it was a nonrecourse loan, so there was no risk, and there was an option on the part of the financial corporation to take that property back. That is, in anybody's book, a warehousing or parking transaction. And there is evidence in the record it was designed to evade the 6 percent limitation on the Investment Rule.

Now, I am not asking you, Mr. Thrash, whether you knew every jot and tittle of that. What I am asking you is can you deny that this agreement which the Rose Law Firm prepared was part of the paperwork of that transaction, that purchase?

Mr. THRASH. Yes, sir, it was not part of that transaction.

Mr. CHERTOFF. It was not?

Mr. THRASH. No, sir. That agreement was never executed—the parties never executed that agreement.

Mr. CHERTOFF. This agreement was never executed?

Mr. THRASH. No, sir.

Mr. CHERTOFF. All right, we will find it. I hope you are not meaning to suggest to me because there were some subsequent changes in the agreement before it came into final—here we go. Here is—September 13, 1985.

The CHAIRMAN. You are familiar with this agreement, aren't you?

Mr. THRASH. Yes, Senator.

The CHAIRMAN. You've looked at it before, haven't you?

Mr. THRASH. Yes, sir.

The CHAIRMAN. This has some real consequences for you and, potentially for the law firm. Is there potential liability as it relates to the law firm that would supervise or know of the fact if there indeed Mr. Ward eventually became the holder of these properties and it was a sham transaction and your law firm was aware of that? Doesn't that have potential liability for your firm?

Mr. THRASH. Senator, that is not the case.

The CHAIRMAN. But you have reviewed this document very carefully, haven't you?

Mr. THRASH. Senator, let me try to make sure—

The CHAIRMAN. What we are concerned about, and I think—Senator Sarbanes, on your time you can ask the questions you want.

Senator SARBANES. Mr. Chairman, I don't want to ask a question. I want the witness to have a chance to answer your questions.

The CHAIRMAN. You know what, Senator, you continue to interfere with everyone who poses questions. You think you are the only person who has the only way in which to go forward, and it is wrong. I have to tell you something else, when you refer to other Senators and the questions they ask, there is no need to do that. You can still go as it relates to the factual thing instead of bringing a Senator's name in and personalizing it. It is not necessary.

Now here is what Mr. Chertoff, and certainly I think we are all concerned about: What knowledge did you have as it relates to this transaction? You were there. You were at the closing in which Seth Ward—and by the way, Seth Ward isn't just anybody, he is the father-in-law to your senior partner, Webb Hubbell. I mean, this isn't just some fellow who walked in off the street you didn't know and he was there for the first time. What knowledge did you have about him getting this property? I mean, this is obviously a sham transaction, and that's what Mr. Chertoff is attempting to ascertain.

Mr. CHERTOFF. Do you have in front of you the executed agreement of September 13, 1985?

Mr. THRASH. Yes, sir, I do.

Mr. CHERTOFF. This is basically an agreement that builds on the draft agreement of August 19th; right?

Mr. THRASH. No, sir.

Mr. CHERTOFF. No, it is not?

Mr. THRASH. No, sir. Can I try to explain?

The agreement that was put on the Rose Law Firm, it was scanned in, Mr. Dover's first agreement was scanned in and some changes were made. That was sent over to Mr. Dover. Madison Financial signed it, the bank signed it, but IDC would not sign it. They did not agree with the terms of it.

Mr. Dover never utilized this agreement. He went back to his old agreement. And there are numerous drafts where he totally disregarded all of the changes that we suggested. That were—and I am basing this on my review of the documents, the changes—

Mr. CHERTOFF. It is not that your memory has come back or anything?

Mr. THRASH. No, sir. I'm basing it on a review of the documents. There were numerous drafts, maybe four or five, using Mr. Dover's original document, disregarding—putting in some of our changes maybe, and then disregarding most of them.

There was one issue that kept going back and forth, and that was whether or not the Hathaway Brokerage Commission was going to be paid by the IDC or Madison. Again, during this time, I was not involved. I was not involved in those negotiations, that agreement that was on Mr. Dover's original agreement, was used. Subsequently, the next draft that was used had the word "affiliate" in there.

Mr. CHERTOFF. Let me stop you. We know what the process of drafting and negotiating is. The question, the critical language we have been talking about here that says, "'Madison' which reference shall include any entity or individual to whom Madison might elect to assign its rights hereunder," language which the Rose Law Firm put in the agreement, why that language appears in the September 13th agreement before you, which to my eyes looks like it has just about everyone's signature on it; isn't that right?

Mr. THRASH. The agreement that was signed on the 13th was executed by everyone and it has that provision in there that says, "entity or individual."

Mr. CHERTOFF. Who put it in, whose draft did it come out of? Your draft, right? Did it come out of your draft, Mr. Thrash?

Mr. THRASH. Mr. Chertoff, I've tried to explain to you. The draft that I had had that in it, and I sent it over. Mr. Dover did not use

that. The next draft that was circulated had affiliate in it, so at some subsequent time later, the parties reinserted it back into their agreement, yes, sir.

Mr. CHERTOFF. So the language that you originally introduced into the agreement—"you" meaning the firm—wound up in the final agreement?

Mr. THRASH. Yes, sir, it did.

Mr. CHERTOFF. So unquestionably it was a part of the process of putting the deal together; right? You guys were involved in negotiating the deal that wound up with this split of the property, with the warehousing in Seth Ward, and you went to the closing, at which this all was unfolded—I am not asking anything more than that—is that true?

Mr. THRASH. What we did is we were involved, we reviewed Mr. Dover's original draft, we made some changes. We prepared the corporate resolutions on August 20th authorizing Madison Financial to purchase all of the property for \$1,750,000. From that point on, I had nothing to do with that transaction.

Mr. CHERTOFF. Why did you go to the closing?

Mr. THRASH. I assume I was asked to.

Mr. CHERTOFF. To do what? To be a spectator or to participate as a lawyer?

Mr. THRASH. At the time of the closing, all the transactions and all the negotiations had been completed. The closing would have required me to, I guess, supervise the Abstract Company to make sure that all the requirements necessary for issuing the title policy were satisfied and that's what I did.

Mr. CHERTOFF. Was anyone else representing Madison Financial but you?

Mr. THRASH. No, sir.

Mr. CHERTOFF. Wasn't it your responsibility to supervise the documents at the closing for the—

Mr. THRASH. I don't know what you mean by "supervise the documents."

The CHAIRMAN. Mr. Thrash, we will get back to that. Let me tell you something, when you are representing a bank at a closing, you are either representing them or you are not. If you think it is coming through to us that you just sat there, like the proverbial potted plant, what were you there for, what did you bill for, how come you went? I mean, it doesn't come through, but we will get back to that.

Senator Sarbanes.

Senator SARBANES. Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Mr. Donovan, I want to go back for a moment to the issue of the legal research on the utility and water and sewer issues that you ended up working on in early October 1986.

Mr. Chertoff asked you some questions about your understanding that this utility that was to be operated there was to be hooked up to someplace where people lived and worked. Then Mr. Chertoff suggested to you that Mr. Ward must have mentioned to Mrs. Clinton during some of those telephone conversations the name Castle Grande.

I want you to take a look at your February 17, 1986 memorandum to Mrs. Clinton because I think it may clarify what those con-

versations may have been about relating to the utilities. Do you have that memorandum before you?

Mr. DONOVAN. Yes, sir.

Mr. KRAVITZ. This is a 12-page memo you wrote to Mrs. Clinton on February 17, 1986, regarding Madison Guaranty Savings & Loan/IDC?

Mr. DONOVAN. Correct.

Mr. KRAVITZ. About two-thirds of the way down the first page, the second full paragraph, why don't you read that into the record?

Mr. DONOVAN. "Madison Guaranty/IDC would like to sell water to a business outside the IDC development and also to another real estate development, Maple Creek."

Mr. KRAVITZ. Now is there anything anywhere in that memorandum indicating that Madison Guaranty or IDC intended to sell water or any other utilities to Castle Grande?

Mr. DONOVAN. No, sir, I searched all these records and found no reference to Castle Grande. I have no recollection of that term ever being used when I was doing this research for Mrs. Clinton.

Mr. KRAVITZ. In fact, Castle Grande would be inconsistent with that paragraph you just read because Castle Grande was not outside the IDC property?

Mr. DONOVAN. Correct.

Mr. KRAVITZ. So by definition, this referred to selling water and sewer facilities to an entity that could not have been Castle Grande?

Mr. DONOVAN. That's correct.

Mr. KRAVITZ. And, of course, your memorandum not only does it indicate it was not Castle Grande, but also it specifically indicates that it was Maple Creek Farms, which is a totally separate development?

Mr. DONOVAN. That's right.

Mr. KRAVITZ. Mr. Thrash, again on the subject of the closing, were there any loan documents that you saw at the closing?

Mr. THRASH. No, sir.

Mr. KRAVITZ. Were there any documents which indicated to you that Madison bore all of the financial risks and that Mr. Seth Ward bore none?

Mr. THRASH. No, sir.

Mr. KRAVITZ. Thank you.

Mr. CHERTOFF. Mr. Donovan, first, let's read the whole page of that memo Mr. Kravitz just showed you of February 17th. What it says is that Madison Guaranty Savings & Loan purchased property and furnished sewer and water service to a number of patrons who obtained their title through the IDC chain of title, and these are residents of IDC development.

Then it goes on to say, the language that you were read, that they wanted to sell water to another real estate development. So it is pretty clear from this, that they were already, in the business of—or were concerned about selling water to a prior real estate development which was the patrons who are already living or use water inside of this property; isn't that correct?

Mr. DONOVAN. That's actually what I was trying to refer to when I spoke about this earlier. And that was that it was my understanding, limited however it is, that the Industrial Development

Company had a wholly-owned subsidiary that was already furnishing water to folks out there. That was my understanding. This was a functioning utility long before Madison ever bought it.

Mr. CHERTOFF. What happened is it was sold and became Castle Sewer & Water; right?

Mr. DONOVAN. I believe that's correct.

Mr. CHERTOFF. Would it surprise you to learn that the sale of that property from the savings and loan to a group including Governor Tucker occurred before February 17, 1986?

Mr. DONOVAN. I've no knowledge of that.

Mr. CHERTOFF. Can you think of any reason why the law firm would be doing work, that the Rose Firm would be doing work that they would be billing to Madison Guaranty Savings & Loan to research something for a utility that had already been sold to some other group involving Governor Tucker?

Mr. DONOVAN. I have no knowledge of that.

Mr. CHERTOFF. At that point, once the utility is sold and the bank sells it, the bank doesn't care anymore; right?

Mr. DONOVAN. I have no knowledge of what—of your—the assumption that it was sold before. You may very well be correct, Mr. Chertoff. I just don't know.

Mr. CHERTOFF. Let me get back to you, Mr. Thrash, and this closing. I'm like Mr. Donovan, I am not a real estate lawyer, but I have bought a couple of houses in my life and I have a recollection, even in the simplest—everybody knows in the simplest real estate transaction, there is a big pile of paper. Your job at the closing was to represent Madison Financial and make sure the paperwork was in order. Now are you telling us there were no deeds?

Mr. THRASH. No, sir. There were two deeds or three, two or three deeds that Mr. Dover had prepared.

Mr. CHERTOFF. And there were no loan documents?

Mr. THRASH. No, sir.

Mr. CHERTOFF. There was a deed now going to Mr. Ward, you are telling us?

Mr. THRASH. Yes, sir.

Mr. CHERTOFF. And—

Mr. THRASH. There may have been two deeds going to Mr. Ward.

Mr. CHERTOFF. Was there a check that went back to show payment which you usually get at a closing?

Mr. THRASH. Again, I don't recall.

Mr. CHERTOFF. Isn't that exactly the kind of stuff that your job—as the lawyer representing one of the parties in the transaction, isn't your job to make sure that no one is giving property away without getting the money they are supposed to get?

Mr. THRASH. Mr. Chertoff, at that closing, the Abstract Company would handle the financing. They would get the money, they would put it into their account, then they would disburse it to the lienholders. They had to do that in order to be able to check off on their requirements to issue the title policy. At this particular closing, you would have had three deeds and you would have had two or three title commitments, and the title company would have checked off on the requirements in order for them to issue title. I think it would have been basically that simple.

Mr. CHERTOFF. What was your job there?

Mr. THRASH. To make sure there was no hitches or no problems that came up.

Mr. CHERTOFF. Did you bill for this?

Mr. THRASH. Yes, sir.

Mr. CHERTOFF. So your job was to make sure there were no hitches, but you can't tell us—you don't really have much of a recollection of the documents you reviewed, you don't know much about the financing for the transaction all of this would have been the title company; is that it?

Mr. THRASH. No, sir. What I said was, there were three deeds that Mr. Dover prepared. I reviewed those because I have obtained the file. There was title commitments which the Abstract Company prepared. The Abstract Company also prepared closing statements where they prorated the taxes and showed how much was going to be paid to the mortgage holders.

Mr. CHERTOFF. Who were the deeds made out to?

Mr. THRASH. There was a deed made out to Seth Ward, I believe, and to Madison Financial. There may have been two deeds made out to Seth Ward.

Mr. CHERTOFF. Two deeds?

Mr. THRASH. Yes, sir.

Mr. CHERTOFF. And at that point, you must have realized since now I guess your memory is revived to the point of remembering you saw some deeds, that now, all of a sudden, the deed to Seth Ward, was that a deed directly from IDC or a deed from Madison Financial?

Mr. THRASH. Again, I haven't revived my memory. I am basing this on the documents I have reviewed. The three deeds—a deed from IDC to Madison, and from IDC to Seth Ward, and from ISC, Industrial Services Company, to Seth Ward, I believe.

Mr. CHERTOFF. So at that point you recognize that the original transaction had been split?

Mr. THRASH. Yes, sir.

Mr. CHERTOFF. OK. Now in terms of what was going back, the money that was going back, and recognizing, as Mr. Dover said, this was a three-party deal. There were other banks that also had to get money. What was there evidencing money going back for these deeds?

Mr. THRASH. When you say "money going back"—

Mr. CHERTOFF. Who paid for Seth Ward's deed?

Mr. THRASH. Again, I don't know.

Mr. CHERTOFF. You didn't ask questions or pursue that at the closing?

Mr. THRASH. That was not an issue that arose at the closing. Had the money not been there, maybe that issue would have arose and we would have tried to figure out what was the problem. But the Beach Abstract would have collected the funds and disbursed those funds to the three banks.

Mr. CHERTOFF. Did you have to check to make sure that funds were collected and disbursed? Did you have to check with your own client to find out whether your client had given the money it had to give?

Mr. THRASH. Again, I don't recall.

Mr. CHERTOFF. Isn't that part of what you are supposed to do as a closing attorney?

Mr. THRASH. Mr. Chertoff, I don't recall if that was an issue. I just don't recall.

Mr. CHERTOFF. I want to ask you, Mr. Donovan, you also speculated that some of these dozen phone calls between Mrs. Clinton and Seth Ward which occurred in October, November, and December of 1985 might also—some of these might have related to the wet/dry issue and the brewery issue; remember that?

Mr. DONOVAN. Correct.

Mr. CHERTOFF. But you will agree with me that if we look at your bill, as far as we can tell, what was the earliest date you got involved in doing some work on this?

Mr. DONOVAN. On December 30, 1985.

Mr. CHERTOFF. So you have no basis, other than speculation, to surmise that some of those earlier conversations had to do with the wet/dry issue; correct?

Mr. DONOVAN. That's correct.

Mr. CHERTOFF. In fact, we have a sworn statement from Mr. Ward, for whatever it is worth, where he says he has no knowledge of discussing at all any issues concerning a brewery, liquor licenses, or a question of whether a particular jurisdiction was wet or dry. So you will agree with me, you are not in a position, to dispute his sworn statement, that he never had any discussion about wet and dry matters?

Mr. DONOVAN. I was not privy to those telephone conversations between Mr. Ward and Mrs. Clinton.

Mr. CHERTOFF. So we are still left with about a little less than 30 hours of time Mrs. Clinton bills on IDC matters, of which half is accounted for, at least to some degree, with various descriptions, and half of which is totally unidentified, and Mr. Donovan, you really don't know what Mrs. Clinton did on that other 14½ hours?

Mr. DONOVAN. I don't know.

Mr. CHERTOFF. You don't know, either, Mr. Thrash?

Mr. THRASH. No, sir, I do not.

Mr. CHERTOFF. Mr. Thrash, do you know why Mrs. Clinton would not have come to you in her drafting of the option for the purchase of real estate between Seth Ward and Madison Financial?

Mr. THRASH. No, sir, I do not.

Mr. CHERTOFF. Was Seth Ward in May 1986, a principal of the bank, someone who was working at the bank?

Mr. THRASH. I would not have any knowledge of that.

Mr. CHERTOFF. You know that at a point in time he was someone working at the bank?

Mr. THRASH. At the time of my involvement, in August and October of 1985, it was my understanding, yes, he was an employee of Madison Financial Corporation or a representative.

Mr. CHERTOFF. Is this appropriate for a lawyer to represent both sides in a purchase and a sale?

Mr. THRASH. Is it appropriate, without a waiver from—

Mr. CHERTOFF. Without a waiver, an informed waiver by one of the parties?

Mr. THRASH. I would have to say probably not, no, sir.

Mr. CHERTOFF. It is probably not appropriate?

Mr. THRASH. That's correct.

Mr. CHERTOFF. Mr. Dover, I want to remind everybody, you have nothing to do with any of this option stuff, you are out of it. We are getting some free legal advice. You would also agree, I take it, absent an informed consent or agreement from both sides, a lawyer shouldn't be representing the purchaser and seller?

Mr. DOVER. That's correct. I would agree.

Mr. CHERTOFF. You also told us you would expect the purchaser of real estate, maybe not the seller, but the purchaser's attorney to make some effort to verify the fact that the seller had ownership and had clear title?

Mr. DOVER. Yes, that would depend on the circumstances, as to how much you were paying for the option—for consideration of the option. I am not talking about the ultimate purchase price if you exercised the option. I am talking about what your paying for the option itself. If you are going to pay a substantial amount of money just for the optional right to decide whether you want to buy it or not, I would think you ought to have some indicia that there is ownership.

Mr. CHERTOFF. In this case there are really two parts of what was paid for the option; one was a thousand dollars to be paid by Madison Financial to the Wards, and the other is a reference to other good and valuable consideration, which is unspecified. And you don't know, Mr. Thrash, what else was paid to Mr. Ward as part of the option price; right?

Mr. THRASH. No, sir, I had nothing to do with the option.

Mr. CHERTOFF. It also says in this agreement, at paragraph 4, "if the optionee," which would be the Financial Corporation, "does not exercise this Option as herein provided, all sums paid by him hereunder shall be retained by the Grantor," meaning the Wards, "free of all claims of Optionee, and neither party shall have any further rights of claims against the other."

So you will agree with me what that means under this option is whatever money Madison Financial paid to the Wards for this option, the thousand dollars plus whatever else they paid, would be irrevocably the Wards' even if the option was never exercised; right? That's what it says.

Mr. THRASH. If that's what it says, I don't have it in front of me. If that's what it says, I will agree with you.

Mr. CHERTOFF. Why don't we get it down to you so you don't have to rely on my characterization, you can verify it.

Mr. THRASH. I'm sorry, Mr. Chertoff. I was not listening closely enough and I apologize.

Mr. CHERTOFF. We will get it down to you in a second. While it is getting down to you, in this transaction, this option, Mrs. Clinton was billing to Madison, so we can agree that that means that Madison at least was Mrs. Clinton's client; right?

Mr. THRASH. I would assume that would be correct.

Mr. CHERTOFF. She was supposed to look out for the interests of Madison in this transaction?

Mr. THRASH. If Madison was her client, I believe that is correct.

Mr. CHERTOFF. Look at this paragraph 4 here, it says that if the optionee—and the optionee here is Madison—if Madison does not exercise the option, all sums paid by Madison hereunder shall be

retained by the Wards free of all claims of Madison. That means that any money paid for the option, the thousand dollars plus this other unspecified good and valuable consideration, would be kept by Ward, if in fact this option were never actually executed?

Mr. THRASH. If it was not exercised.

Mr. CHERTOFF. Right, if they didn't choose to exercise the option?

Mr. THRASH. Well, if they didn't choose to exercise the option, the thousand dollars would be Mr. Ward's.

Mr. CHERTOFF. Plus whatever else is the good and valuable consideration?

Mr. THRASH. Mr. Chertoff, you're a lawyer, you know that's just language that probably doesn't mean anything other than a thousand dollars was paid.

Mr. CHERTOFF. I also know that Mr. Ward actually got some other money from the savings and loan around this time, so I don't know that this is something I can use to draw—use my common experience to comment on, at least as a private lawyer. But, you will agree with me that that's what the language means; right? That if the option isn't exercised, whatever Ward got for the option, he gets to keep?

Mr. THRASH. Yes, sir.

Mr. CHERTOFF. Did you know that this option was the subject of litigation between Mr. Ward and the savings and loan at some later time, within the next couple of years?

Mr. THRASH. No, sir.

Mr. CHERTOFF. Do you know Mr. Hubbell attended the trial?

Mr. THRASH. No, sir.

Mr. CHERTOFF. Did anybody ever seek to ask around the firm whether there was anybody who had any knowledge about this option which could have been relevant evidence in a case in which your former client, the savings and loan, was in a dispute with Seth Ward?

Mr. THRASH. I don't recall.

Mr. CHERTOFF. Would you agree with me that, in a case in a trial involving this option, evidence from the person who drafted the option would be pretty useful to the parties?

Mr. THRASH. Mr. Chertoff, you are asking me to speculate or comment on something I don't know anything about.

Mr. CHERTOFF. I am asking you to draw on your experience as a lawyer. Would you agree with me, from your experience doing transactions, that when someone draws up a document like an option, and it becomes the subject of a dispute that goes to court later, that the lawyer who drafted the option is pretty likely to be someone who is at least going to be getting some requests for discovery, if not actually going to be a witness, because they are going to have a lot of relevant information?

Mr. THRASH. I guess that's possible. I am not sure I am following you, but I guess that's possible.

Mr. CHERTOFF. To help you follow me, what I am really trying to figure out is, why it is that, as far as I can determine in this case, which was subsequently hard fought first—I shouldn't say hard fought—was originally fought between the bank and Ward, and then later the RTC jumped into it because they had a disagreement, why it is that there doesn't seem to be any indication that

Mrs. Clinton was giving evidence or giving information which, I think, might have actually shed interesting light upon how this option was formed and how it related to that commission which Mr. Ward received as part of that October transaction which we have been talking about?

Mr. THRASH. I don't know what her involvement in that was. I just don't know.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I just have a brief question for Mr. Dover. As a consequence, Mr. Dover, of the appearance of Mr. Fitzhugh today, I am wondering in the course of your activities associated with the Industrial Development Company as counsel, that you had occasion to review, do business, or have transactions on behalf of IDC with Mr. Davis Fitzhugh?

Mr. DOVER. No, sir, none come to mind.

Senator MURKOWSKI. So, in activities associated with Madison in acquiring IDC, who did you deal with at Madison?

Mr. DOVER. I didn't deal with anybody at Madison. I dealt a little bit with Mr. Thrash, but—

Senator MURKOWSKI. Who was Mr. Thrash?

Mr. DOVER. Mr. Thrash is at the table next to me.

Senator MURKOWSKI. You dealt with the lawyer for Madison?

Mr. DOVER. Yes, sir. The real negotiations, though, Senator were carried out between Mr. Lyle, who was the chairman of the board of my client, Industrial Development Company, and Seth Ward, in whatever hat he was wearing.

Senator MURKOWSKI. All right. Now do you have any knowledge of what Mr. Fitzhugh did for Madison?

Mr. DOVER. None whatsoever.

Senator MURKOWSKI. He indicated he was a vice president, at least he kind of thought he was, and did real estate activities and preparations of some sort. He was a lawyer, but you didn't deal with him?

Mr. DOVER. No, sir, I didn't cross his path, to my recollection, I did not.

Senator MURKOWSKI. Who owned IDC?

Mr. DOVER. Well, it was fairly broadly held.

Senator MURKOWSKI. Were any of the principals of Rose that had any interest in IDC?

Mr. DOVER. Senator, I don't have a shareholder's list with me. I think maybe Mr. Gaston Williamson may have been a shareholder.

Senator MURKOWSKI. And he was associated with Rose?

Mr. DOVER. Yes, sir, he used to be.

Senator MURKOWSKI. Was that in that timeframe of 1984 to—

Mr. DOVER. I honestly don't know when Gaston retired from the Rose Firm.

Senator MURKOWSKI. I don't know whether you would have had occasion to hear, but did you know of Mr. Fitzhugh's rather extraordinary financial transaction where he earned a \$50,000 commission on a nonrecourse loan, which was identified in an exhibit as 6.6 acres covering the warehouse for a sales price of \$500,000?

Mr. DOVER. No, sir, I didn't have any knowledge of that.

Senator MURKOWSKI. You didn't have any knowledge of that?

Mr. DOVER. No, sir.

Senator MURKOWSKI. Mr. Thrash, I wonder if you could tell us a little about your dealings then with Mr. Fitzhugh.

Mr. THRASH. I am not sure I have ever had any dealings with Mr. Fitzhugh.

Senator MURKOWSKI. I understood Mr. Dover to indicate in his remarks that you represented—

Mr. DOVER. No, Senator, maybe I misspoke or perhaps you misunderstood. Mr. Thrash represented Madison in this IDC transaction, and I spoke to him in that context.

Senator MURKOWSKI. Because I had asked you if Mr. Fitzhugh, if you had any dealings and you said no, and I think you made a reference to Mr. Thrash as having had the dealings with Fitzhugh?

Mr. DOVER. No, I meant to say, if I did not say, I meant to say, I did not have any dealings with Mr. Fitzhugh. I did have dealings with Mr. Thrash.

Senator MURKOWSKI. Did it involve any of the transfer of land from IDC—what is it, IDC to Madison?

Mr. DOVER. That's all it involved.

Senator MURKOWSKI. You have responded, Mr. Thrash, saying you had no dealings with Mr. Fitzhugh?

Mr. THRASH. That's correct.

Senator MURKOWSKI. Mr. Donovan, did you have an occasion on behalf—

Mr. DONOVAN. No, sir.

Senator MURKOWSKI. Who did in the law firm?

Mr. THRASH. I am not sure that anyone did, Senator.

Senator MURKOWSKI. Well, you represented Madison—

Mr. THRASH. On some isolated transactions that did not—

Senator MURKOWSKI. There was the preparation of a 22-acre parcel that was done by one of your partners or associates. That's been in evidence before the Committee for some time, plus certain billing records.

Mr. THRASH. Senator, I don't know what you are talking about.

Senator MURKOWSKI. That was an exhibit. Maybe we can put the exhibit up.

Mr. THRASH. Senator, I just don't understand what you are talking about.

Senator MURKOWSKI. I'm not going to pursue that, but it was an issue that was brought up before, and I think we've fairly well exercised the questionable status of it, but it seems to me that, you know, as we look at the law firm, I assume you would agree that any lawyer of Rose would know that it was fraudulent to utilize a straw man in an attempt to circumventing Federal law?

Mr. THRASH. I would think so, yes, sir.

Senator MURKOWSKI. I assume that you're aware that this Committee heard testimony yesterday from the Home Loan Bank Board that described the corruption of the land transactions of Madison as being, I think they used the word "obvious."

Mr. THRASH. Senator, I did not see those. I have not kept up with that.

Senator MURKOWSKI. And are you aware that the testimony was heard from the Home Loan Bank Board examiners that said that Seth Ward was clearly a straw man?

Mr. THRASH. No, sir.

Senator MURKOWSKI. Are you aware that one of your associates in the law firm billed eight phone calls to that same straw man?

Mr. THRASH. I am aware of the billing records that have been produced, yes, sir.

Senator MURKOWSKI. I have no further questions.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Mr. Thrash, do you have any recollection as to who was the person who first asked you to work on the IDC transaction?

Mr. THRASH. Again, I do not recall.

Mr. GIUFFRA. Now, you had just made partner in August 1985, so normally you would keep the billing partner apprised as to the matter; right?

Mr. THRASH. I don't think so, on that particular transaction. I think I was the responsible—

Mr. GIUFFRA. Were you the billing partner?

Mr. THRASH. No, sir.

Mr. GIUFFRA. Do you know who the billing partner was?

Mr. THRASH. I don't think I knew at that time.

Mr. GIUFFRA. Did you later learn it was Mrs. Clinton?

Mr. THRASH. I have learned in preparing for these hearings that Mrs. Clinton was the billing partner on that file.

Mr. GIUFFRA. But you do not know who asked you to first work on this transaction?

Mr. THRASH. That's correct.

Mr. GIUFFRA. Could we put up on the Elmo the New Client Master Form? You have a copy of this before you?

Mr. THRASH. I can see it on the screen.

Mr. GIUFFRA. Have you seen this document before, sir?

Mr. THRASH. Yes, sir. It was shown to me back in December.

Mr. GIUFFRA. And this is a form that the Rose Law Firm used during this period when you opened up a new matter; right?

Mr. THRASH. Yes, sir, I believe that's correct.

Mr. GIUFFRA. In this particular case the new matter is matter 5, IDC; right?

Mr. THRASH. That's correct.

Mr. GIUFFRA. The client is Madison Guaranty; right?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. The billing attorney is No. 42?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. Am I correct that at the Rose Law Firm different attorneys received different numbers?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. Who was billing attorney No. 42 in August 1985?

Mr. THRASH. At the time I first saw this, I did not know who No. 42 was. I have since learned that that was Mr. Hubbell.

Mr. GIUFFRA. So Webb Hubbell was the person who opened up the IDC matter at the Rose Law Firm; right?

Mr. THRASH. He was probably the one that prepared the New Client Master Form and put it into the system, yes, sir.

Mr. GIUFFRA. You started working on this transaction about 4 days—you started working on August 6; right?

Mr. THRASH. Yes.

Mr. GIUFFRA. Mr. Hubbell prepares this document on August 2.

Mr. THRASH. Again, I don't know that Mr. Hubbell prepared this document.

Mr. GIUFFRA. But it has his number right there. It says billing attorney No. 42. That's Mr. Hubbell; correct?

Mr. THRASH. That's correct.

Mr. GIUFFRA. So 4 days before you start work, Mr. Hubbell is setting this thing up and getting the wheels in motion at the firm, right, so you can work on this matter?

Mr. THRASH. This was an internal document where it showed that we were creating an account to place our billings into, and whoever prepared it put the billing attorney as No. 42, which is Webb Hubbell. The actual billing attorney was Mrs. Clinton. She was the one that actually sent the bills out. I don't know if that was a mistake done by the billing department but No. 42 was Webb Hubbell but the actual billing was done by Mrs. Clinton.

Mr. GIUFFRA. Do you have any knowledge of any work that Mr. Hubbell did with regard to the IDC matter?

Mr. THRASH. No, sir.

Mr. GIUFFRA. Mr. Donovan, do you?

Mr. DONOVAN. No, sir.

Mr. GIUFFRA. But you know that he, in fact, did some work on the IDC matter?

Mr. DONOVAN. I do not know that.

Mr. GIUFFRA. The billing records reflect that he did do some work related to the IDC matter; right?

Mr. DONOVAN. If they're in there—

Mr. GIUFFRA. Telephone calls with Mrs. Clinton?

Mr. DONOVAN. As I said before, the billing records are the best evidence of who did what on the IDC matter.

Mr. GIUFFRA. And they reflect that Mr. Hubbell did do some work on the IDC matter?

Mr. THRASH. On the transaction that I worked on, Mr. Hubbell was not involved.

Mr. GIUFFRA. Insofar as you know, the narrow part you dealt with?

Mr. THRASH. That's correct, he was not involved in that.

Mr. GIUFFRA. But he may have been involved in other things, and in fact the Pillsbury firm, there's a September 24th agreement which we can put up, and this is an arrangement between—can we have that up, the September 24 agreement? This is a document that was prepared indicating the agreement between Mr. Ward and Mr. McDougal with regard to the IDC property, and the Pillsbury Report at page 67 states, "That a reasonable inference from the evidence is that Mr. Ward prepared this agreement in consultation with Mr. Hubbell." Are you aware of that statement in the Pillsbury Report?

Mr. THRASH. Yes, sir, I have read that.

Mr. GIUFFRA. Just one last thing. Mr. Thrash, did you know in 1985 and 1986 when you were representing Madison Guaranty, that Mrs. Clinton was a business partner of Jim McDougal?

Mr. THRASH. No, sir, I don't think I did.

Mr. GIUFFRA. When did you learn of the Whitewater investment?

Mr. THRASH. I would have learned about it during the 1990's when it was picked up by the media.

Mr. GIUFFRA. So in 1992 during the Presidential Campaign?

Mr. THRASH. That's probably correct.

Mr. GIUFFRA. Mr. Donovan, when you started doing work on the Madison Guaranty matters in 1985 and 1986, did you know that Mrs. Clinton was a business partner with Jim McDougal?

Mr. DONOVAN. No.

Mr. GIUFFRA. When did you learn that Mrs. Clinton was a business partner with Jim McDougal and the Whitewater investment?

Mr. DONOVAN. It would have been during the campaign.

Mr. GIUFFRA. Now, Jim McDougal was the owner of Madison Guaranty; correct?

Mr. DONOVAN. I think he—yes.

Mr. GIUFFRA. Mr. Thrash, you were aware that Mr. McDougal owned Madison Guaranty; right?

Mr. THRASH. Yes, sir.

Mr. GIUFFRA. Should Mrs. Clinton have disclosed to her partners at the Rose Law Firm that she was a business partner of a firm client, i.e., Mr. McDougal?

Mr. THRASH. I don't believe that was a policy requirement that she do so.

Mr. GIUFFRA. You don't think she had any obligation to disclose to her partners that she was in business with a firm client?

Mr. THRASH. No, sir.

Mr. GIUFFRA. No obligation whatsoever?

Mr. THRASH. No, sir, I don't think so.

Mr. GIUFFRA. Mr. Donovan, you don't believe Mrs. Clinton had any obligation to disclose the fact that she was a business partner with a firm client to her partners at the Rose Law Firm?

Mr. DONOVAN. Pursuant to? Do you have a rule, a model rule of professional conduct that you're referring to? I know of no rule of professional conduct which would have required her to do that.

Mr. GIUFFRA. So there was no Rose policy with regard to the intermingling of business relationships between lawyers at the firm and clients?

Mr. DONOVAN. I am unaware of any Rose policy to that effect at that time.

Mr. THRASH. Could I respond to that? We did have a policy that dealt with being a director or an officer of a corporate client, but not in entering into business dealings with an owner of a particular corporate client.

Mr. CHERTOFF. Let me try this on you, Mr. Donovan. How does it strike you to have—your client when it was Madison Guaranty Savings & Loan was the savings and loan; right?

Mr. DONOVAN. Correct.

Mr. CHERTOFF. It wasn't Mr. McDougal personally?

Mr. DONOVAN. Correct.

Mr. CHERTOFF. In fact, it would have been your obligation and a lot of law firms to learn this lesson very painfully in the late 1980's and early 1990's, it would have been your obligation or the obligation of any partner in the firm if they became aware of any-

thing irregular, to bring it to the attention of the board of directors or perhaps others within the savings and loan government structure; right?

Mr. DONOVAN. I'm aware of that rule of law.

Mr. CHERTOFF. Now, you don't see a problem where one of the partners in the firm has a separate business relationship with a guy who owns most of the stock of the company where you have not only a personal relationship but one in which you've a separate partnership?

Mr. DONOVAN. That was not my testimony. My testimony was that I am unaware of any model rule of professional responsibility which would require a lawyer to disclose a business relationship with a client.

Mr. CHERTOFF. Do you know what a fiduciary is?

Mr. DONOVAN. Yes.

Mr. CHERTOFF. A fiduciary is someone, it is a partnership or an officer in a corporation, someone who owes the utmost obligation of loyalty. That's a fiduciary.

Mr. DONOVAN. Something above a reasonable care, yes.

Mr. CHERTOFF. Your law firm were fiduciaries of the savings and loan; right?

Mr. DONOVAN. I understand that rule of law, Mr. Chertoff.

Mr. CHERTOFF. There's also a rule of law that Mrs. Clinton as a partner with Mr. McDougal in a private venture, they were fiduciaries with each other, right, because they were partners? That's an old and very well known—

Mr. DONOVAN. I suppose so.

Mr. CHERTOFF. That's a well known rule of law; right?

Mr. DONOVAN. Sure.

Mr. CHERTOFF. If you had a situation where Mr. McDougal had a problem or had done something wrong in connection with a savings and loan, which shocking as it may seem evidently turns out to have been the case, there could very well be a conflict between Mrs. Clinton's obligation as a fiduciary to the savings and loan and her obligation as a fiduciary to her partner, as well as her financial relationship with her partner, particularly if somehow that partnership were tied up with a savings and loan, say, by getting money from the savings and loan or supposing, for example, money was coming from the savings and loan or accounts at the savings and loan was paying off debts that had been accrued in the private partnership. I mean, you can see all kinds of conflicts and contradictions between fiduciary duties that could arise in that situation; right?

Mr. DONOVAN. Mr. Chertoff, you could speculate, which is all that is. It is bald speculation. My point was you can point to no model rule of professional conduct which required Mrs. Clinton to disclose her business relationship with a client, with a principal of a client. It doesn't exist.

Mr. CHERTOFF. Now were you aware that there was a time that a memo went around in 1988 asking specifically in connection with proposed representation of the Federal Savings & Loan Insurance Corporation—

Mr. DONOVAN. Yes, sir.

Mr. CHERTOFF. —to have the disclosure of all relationships with principals at Madison?

Mr. DONOVAN. I'm aware of that.

Mr. CHERTOFF. Do you know whether Mrs. Clinton disclosed her relationship at that time?

Mr. DONOVAN. She may very well have. I don't know whether she did or not.

Mr. CHERTOFF. Would it surprise you to hear that, I believe, Mr. Clark who was here wasn't aware of any such disclosure?

Mr. DONOVAN. As I recall what Mr. Clark said was that we don't have any written response to that memorandum. It could—

Mr. CHERTOFF. Will you agree with me at least that when that memo came around, she should have disclosed it?

Mr. DONOVAN. Sure.

Mr. CHERTOFF. Thank you.

Mr. DONOVAN. There's no evidence that she did not.

Mr. CHERTOFF. Is there a written record of her having done so?

Mr. DONOVAN. No written record.

Mr. CHERTOFF. And you didn't know in 1988?

Mr. DONOVAN. I did not know.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Mr. Thrash and Mr. Dover, in fairness to you, I simply want to quote a paragraph from the report on the representation of Madison Guaranty Savings & Loan by the Rose Law Firm, which was prepared for the Resolution Trust Corporation by Pillsbury Madison & Sutro, San Francisco law firm. And it says:

The documents that Darrell Dover and the Rose Law Firm have produced do not deal at all directly with the arrangements between Ward and Madison Financial. The deeds mention both buyers, the purchase agreement mentions S&L's, but someone who saw only these documents would not have noticed of the arrangements between Ward and Madison Financial, much less responsibility for their creation.

Now that was the situation as both of you understood it; is that correct, when you went into this closing?

Mr. THRASH. Yes, sir.

Mr. DOVER. That's correct, Senator.

Senator SARBANES. Thank you.

Mr. DOVER. Thank you for that.

The CHAIRMAN. Mr. Thrash, there was an option as it related to the manner in which these properties could be transferred, is that not true, the option as it related between Madison and Mr. Ward?

Mr. THRASH. There was an option that we discussed earlier today, yes, sir.

The CHAIRMAN. Right. Who prepared that option?

Mr. THRASH. I did not prepare it. I don't know. The billing records seem to indicate Mrs. Clinton may have prepared it.

The CHAIRMAN. So Mrs. Clinton obviously had knowledge of this relationship, this ability to exercise this transfer, and that's prior to the closing, isn't it?

Mr. THRASH. That was subsequent to the closing by approximately 6 or 8 months or a year, I believe.

The CHAIRMAN. Now let me ask you this. You go to the closing you didn't even know Seth Ward was going to be there?

Mr. THRASH. Again, Senator, I told you, I don't recall the closing but I would have assumed he would have been there, yes, sir.

The CHAIRMAN. Why would you assume that?

Mr. THRASH. He was the representative of Madison.

The CHAIRMAN. Weren't there two deeds at that point in time?

Mr. THRASH. Yes, sir.

The CHAIRMAN. All right. Did one of those deeds split off the property and gave him a piece of that property?

Mr. THRASH. That is correct. He was a purchaser of part of the property.

The CHAIRMAN. You didn't ask your client, Mr. McDougal or Madison, what this involved? You just saw two deeds and you didn't know anything else?

Mr. THRASH. I knew that Madison was acquiring the property and that they had cut a business deal to allow Mr. Ward to acquire part of the property, and that's what we were doing there today.

The CHAIRMAN. You knew that Mr. Ward at that time was an employee of the bank?

Mr. THRASH. That is correct. Or he was an employee of Madison Financial Corporation.

The CHAIRMAN. Yes, a subsidiary of the bank.

Mr. THRASH. Yes, sir.

The CHAIRMAN. You had no knowledge whatsoever as it related to how this transaction took place? You didn't know, for example, that he was getting paid a commission to bring this about and that he was going to have this loan agreement that made it possible for him to buy this?

Mr. THRASH. No, sir, I did not.

The CHAIRMAN. You see, again, you have a situation where you are not talking about just a stranger showing up there. You are talking about Mr. Hubbell, who was the senior partner, his father-in-law. He shows up there.

You have an option agreement which comes into play which is prepared by a member of your firm. You have a whole system here which leaves unaccounted for some 14½ hours, almost half the billing time totally unaccounted for.

You have Seth Ward saying, Mrs. Clinton did not talk to me about the very matters that some would suggest that possibly she did, Mr. Donovan said he speculated.

You have totally unaccounted for this time, and yet you do have this transaction and it does appear that Mr. Hubbell was involved, and certainly his father-in-law. I say it appears as a result of this client form, which is the New Matter Master Form. We're not talking about an isolated incident or a coincidence, are we, that it would be Mr. Hubbell's name who appears on this, and again Seth Ward is Mr. Hubbell's father-in-law.

Mr. THRASH. Senator, it could be an error because the actual billing was done by Mrs. Clinton.

The CHAIRMAN. Oh, I understand that, I understand that.

Mr. THRASH. So I don't know.

The CHAIRMAN. I have to tell you that—and by the way, nobody has ever heard of Castle Grande, no one ever heard of Castle Grande. I mean, even when we find billing records that have CG,

at one point they were going to suggest it was a possible partner's name, that's the kind of thing that raises very real questions.

Mr. THRASH. Can I comment on that?

The CHAIRMAN. Sure.

Mr. THRASH. The CG that you were referring to was what was clarified earlier today, which was the accounting record of Madison Guaranty, not a billing record of the Rose Law Firm.

The CHAIRMAN. Well, again, and I would just point out that the Sutro people did not have these billing records when they came to their conclusion, and I have to suggest to you that as it relates to Mr. Ward and his participation, the facts are pretty clear, it was an absolute total sham transaction, absolutely. He was a straw man, it was part and parcel of the total corrupt manner in which Madison was operated, and there is no doubt about that. There is no doubt that was a pyramid scheme in which the taxpayers eventually wound up paying off all of those obligations. That's what the record shows, quite clearly. It's not one fictitious employee who was used, it's not one time but it's a pattern, repeatedly, over and over and over; and that's the record. That's why we have some difficulty.

Mr. Chertoff, do you have any follow-up questions?

Mr. GIUFFRA. We just have one more.

The CHAIRMAN. Go ahead.

Mr. GIUFFRA. Mr. Donovan, during the 1992 Presidential Campaign, were you contacted by Mr. Foster or Mr. Hubbell about the files that you had with regard to Madison Guaranty?

Mr. DONOVAN. No.

Mr. GIUFFRA. Mr. Thrash, were you contacted by Mr. Hubbell or Mr. Foster with regard to the files you maintained with regard to Madison Guaranty?

Mr. THRASH. No, sir, I was not.

Mr. GIUFFRA. Were you contacted by anyone at the Rose Law Firm during the 1992 Presidential Campaign about your Madison Guaranty files?

Mr. THRASH. No, sir.

Mr. GIUFFRA. Mr. Donovan, by anyone?

Mr. DONOVAN. No, sir.

The CHAIRMAN. We have no further questions.

Senator SARBANES. I have some, Mr. Chairman, in light of the questioning which you just put to the witnesses.

Mr. Thrash, what was——

The CHAIRMAN. You can't help but being personal, can you?

Senator SARBANES. I think it's important—no, I'm going to get into this Castle Grande and this billing.

The CHAIRMAN. You have the ability of getting into any matter you want but it's not necessary to refer to another Senator. Go to the specific facts and ask them, but you have a habit of doing that, and I tell you, I don't think that's good.

Senator SARBANES. Well, I think it becomes very relevant when you get the kind of misinformation that's been laid out in this questioning. Now——

The CHAIRMAN. I can only suggest to you that's why some of your colleagues respond to you in the manner in which they do, because you personalize, whether they have given a certain characterization that you don't agree with, you have every right to point it out and

point out inconsistencies, but I don't think it behooves us to spell out someone else's name.

Senator SARBANES. If you think it's being unfairly personalized after I lay it out, I will be happy to discuss it with you.

Mr. Thrash, Chairman D'Amato put to you the question of the option. We had been discussing this quote from the Pillsbury Report with respect to the closing. What was the date of the closing?

Mr. THRASH. October 4, 1985.

Senator SARBANES. October 4, 1985. Now, my records show that the option agreement was May 1, 1986.

Mr. THRASH. That is my recollection of the document, too, Senator Sarbanes.

Senator SARBANES. That would have been 7 months later?

Mr. THRASH. Yes, sir.

Senator SARBANES. So knowledge about the option agreement was not possible at the time you went to the closing?

Mr. THRASH. No, sir.

Senator SARBANES. Let me turn to this billing record which the Chairman brought up again, because we had a big to-do about it here the day that Mr. Clark was here and about these initials CG and the assertion that that represented Castle Grande. I have to say to you, at the time, I mean, I can understand someone making that assertion so I want to say that in all fairness to the Chairman. We had this billing record here in front of us, these initials CG were there, Mr. Clark was then testifying, as I recall, and the Chairman sort of went at him pretty hard that this really represented Castle Grande, some possibility had been raised that it might represent the initials of another lawyer in the firm.

Mr. Clark was asked, is there a lawyer there that has the initials CG, the answer was yes but then he was asked well, did he do any work on this, and the answer was he didn't think so.

In any event, I'm prompted to this because of bringing it back, which just occurred, we received a letter from Mr. Clark today, and I just want to quote from that letter. This is to Chairman D'Amato and myself:

During my testimony on January 18, 1996, I was asked about a voucher, a copy of which is attached.

And that's this document here [indicating].

I was asked, "Now this is a Rose Law Firm voucher, am I right?" And I answered, "That's correct." Now that I have had the time to review this document, I believe that answer was incorrect. I had not seen this document prior to it being shown to me during my testimony. Though I did not recall it as a document produced by Rose Law Firm to the Committee or to any of the other investigators, I incorrectly identified the voucher as a Rose Law Firm document because the words "Rose Law Firm" appear at the bottom of the document and because the question suggested this is a Rose Law Firm voucher.

After reviewing the document further, it appears that the voucher actually was photocopied while laying on top of a Rose Law Firm invoice, thus creating a single paper with the voucher on the top half and an incomplete copy of the Rose Law Firm invoice on the bottom half of the page.

I have consulted with our accounting department and I am told that we did not use documents like this in 1985, 1986 as we do not today.

Further, the face of the document says Rose Law Firm, 1986 billing, which is the type of entry one would expect by the client and not by the firm. Our counsel's conversations with the Committee staff indicate that this document was produced to the Committee by the RTC. I believe this document is not from the Rose Law Firm but instead probably an internal document from Madison Guaranty or Madison Financial.

Now, Mr. Chairman, I simply make this observation. As I indicated at the outset of this, I can understand the approach, the line you took with Mr. Clark with respect to this CG on this document. I do not understand how given this letter which came to us, you could repeat that assertion here today unless you have some information that I don't have, which in effect calls into question the explanation offered in this letter.

In all fairness, I don't think it's fair to people to reassert this CG approach, which as I said I understood how it was done the other day, I mean, I looked at this thing and wondered about it, and you threw out a theory or advanced a theory about it. But now we have this letter, which seems to me a plausible explanation on its face, and in any event, I don't understand reasserting the theory advanced the other day when we have this letter before us here this afternoon.

The CHAIRMAN. Senator, have you completed your observation?

Senator SARBANES. Yes.

The CHAIRMAN. Senator, let me say that I would think you might know that if I had seen that, I certainly would have made some reference to it. That letter was just produced today, apparently handed to staff. We have been working basically round the clock.

You made some reference to this letter earlier, but the fact of the matter is I have not read it, I have not seen it, and I think that for you to characterize my remarks in that manner are just not necessary. So had you said, Senator, I have this letter, it just came today, this offers an explanation. That's something we understand because that happens all the time here, with one side or the other. And so to try to characterize my reference to something that I recall, and that was the Castle Grande, the CG which was taken to be Castle Grande, I think is not inappropriate for me to do.

So I am sorry that you failed to realize that I had not seen this letter. I had not been apprised of the content of the letter. You did make reference earlier that a letter came, and if you had observed and read into the record what it contained, I believe I said put the letter into the record, but we did not go through the contents of the letter. I don't think—

Senator SARBANES. Mr. Chairman, Mr. Thrash was asked about it earlier.

The CHAIRMAN. Look, look. I listened to you, I don't interrupt you but you can't help yourself, it's bigger than you. Everyone has a right to make his observation. I listened to you make what I considered to be outlandish, inappropriate comments, and I withhold. It seems to me that you should attempt to control yourself a little.

Now, I want to make a point here, because there's been so much made about the Sutro report. The Sutro report was made without the benefit of having available these billing records. It was completed and, I think, submitted December 31st. These records, we understand, appeared for the first time or publicly acknowledged that they were found on January 4th by Mrs. Huber, and we all know how she said she found them back in the personal residence back in August, brought them downstairs in a box in her office, and then on January 4th came upon them, called the Clintons' attorney, called her own attorney, and I believe they were made available, copies were made available on the 5th. So they did not have

the records, which do raise some very interesting and very important points as it relates to the billings, et cetera. The fact is that matter will have to be reviewed.

Notwithstanding that, I want to thank the witnesses today. I would also note that we have been in session, with the exception of a 45-minute break that we took, from 10 a.m. until 6:30 p.m. I make that observation because this Committee is working hard, and I don't know if the Minority side would like to put another witness on or another panel following this one. I mean——

Senator SARBANES. The answer to that is we would, Mr. Chairman, as I indicated to you.

The CHAIRMAN. Well, I think that that's really going well beyond what is reasonable, to start at 10 a.m. and to finish up at 6:30 p.m. on a day when we have no votes, which makes that possible or at least more—we could get more work in and have a break of 45 minutes, doesn't seem to me that this is a process which is attempting to slow matters down. We are attempting to get the facts. I want to thank the witnesses for coming in, I want to thank them for their patience, and I want to thank them for attempting to answer the questions to the best of their ability.

We stand in recess until tomorrow at 10 a.m.

[Whereupon, at 6:34 p.m., the hearing was adjourned.]

[Appendix supplied for the record follows:]

85 24997

FILED & RECORDED

WARRANTY DEED

(CORPORATION)

1985 DEC 31 PM 1:09

BY JACOB B. McDOUGAL
PULASKI CIRCUIT CLERK

KNOW ALL MEN BY THESE PRESENTS:

That, Madison Financial Corporationa corporation organized under the laws of the State of Arkansas

GRANTOR,

by its President and Secretary, duly authorized by proper resolution of its Board of Directors, for the consideration of the sum of Ten and no/100 Dollars (\$ 10.00)in hand paid by Davis Fitzhugh GRANTEE,

the receipt of which is hereby acknowledged, does grant, bargain, sell and convey unto the said GRANTEE and unto his heirs (successors) and assigns forever the following described land,

situated in Pulaski County, Arkansas:

A tract of land located in the NE 1/4 SW 1/4 Section 24, T-1-S, R-12-W, -Pulaski County, Arkansas, more particularly described as: Starting at an iron pin marking the intersection of the North right-of-way line of East 145th Street and the West right-of-way line of Dineen Drive; thence S89° 44' 40"E along said North right-of-way line, 22.75 ft.; thence Southeasterly and continuing along said North right-of-way line, being the arc of a 2,915 ft. radius curve to the right having an arc distance of 559.07 ft.; thence S78° 45' 20"E and continuing along said North right-of-way line, 2724.44 ft. to the point of beginning of the tract of land described herein; thence N11° 14' 40"E and perpendicular to said North right-of-way line, 522.72 ft. to a point; thence S78° 45' 20"E and parallel with said North right-of-way line, 555.56 ft. to a point; thence S11° 14' 40"W and perpendicular to said North right-of-way line 522.72 ft. to a point on said North right-of-way line; thence N78° 45' 20"W along said North right-of-way, 555.56 ft. to the point of beginning, containing 290,402.32 sq. ft. or 6.6667 acres more or less.

DO HAVE AND TO HOLD The same unto the said GRANTEE

Davis Fitzhugh and unto his heirs (successors) and assigns forever with all appurtenances thereunto belonging. And GRANTOR hereby covenants with the said GRANTEE that it will forever warrant and defend the title to said lands against all claims whatever



IN TESTIMONY WHEREOF, The name of the grantor is hereunto affixed by its President and attested and its seal affixed by its Secretary, this 25 day of October, 1985.

ATTEST:

Secretary

John Latham

(Corporate Seal)

Madison Financial Corporation

A Corporation

By Jacob B. McDougal

President

Jacob B. McDougal

Prepared by:
John Latham, Attorney
P. O. Box 1583
Little Rock, AR 72201

KCR00978

HOUSE COPY

83 71996

WARRANTY DEED

MARRIED PERSONS

FILED & INDEXED
1985 DEC 31 PM 1:00
BY *S. J. Kach*
JACOB LIA AL: CHANDER
PULASKI COUNTY CLERK

Know All Men by These Presents:

THAT WE,

Seth Ward

and

Yvonne Anna Ward

husband and wife, GRANTORS.

for and in consideration of the sum of Two and 00/100

DOLLARS (\$10.00),

and other good and valuable considerations

in hand paid by Madison Financial Corporation

GRANTEE, the receipt of which is hereby acknowledged, hereby grant,

bargain, sell and convey unto the said GRANTEE, and unto its heirs and

assigns forever, the following lands lying in Pulaski County, Arkansas:

A tract of land located in the NE 1/4 SW 1/4 Section 24, T-1-S, R-12-W, Pulaski County, Arkansas, more particularly described as: Starting at an iron pin marking the intersection of the North right-of-way line of East 145th Street and the West right-of-way line of Diheen Drive; thence S89° 44' 40"E along said North right-of-way line, 22.75 ft.; thence Southeasterly and continuing along said North right-of-way line, being the arc of a 2,915 ft. radius curve to the right having an arc distance of 559.07 ft.; thence S78° 45' 20"E and continuing along said North right-of-way line, 2724.66 ft. to the point of beginning of the tract of land described herein; thence N11° 14' 40"E and perpendicular to said North right-of-way line, 522.72 ft. to a point; thence S78° 45' 20"E and parallel with said North right-of-way line, 555.56 ft. to a point; thence S11° 14' 40"W and perpendicular to said North right-of-way line, 522.72 ft. to a point on said North right-of-way line; thence N78° 45' 20"W along said North right-of-way, 555.56 ft. to the point of beginning, containing 290,402.32 sq. ft. of 6.6667 acres more or less.

This deed is correcting an improper legal description in a deed dated October 4, 1985, filed and recorded October 8, 1985, as document #BS 55124

To have and to hold the same unto the said GRANTEE, and unto its

heirs and assigns forever, with all appurtenances thereunto belonging

And we hereby covenant with said GRANTEE, that we will forever warrant and defend the title to the said lands against all claims whatever.

And we, the GRANTORS,

for and in consideration of the said sum of money, do hereby release and relinquish unto the said GRANTEE all our rights of dower, curtesy and homestead in and to the said lands

WITNESS our hands and seals on this

25 day of October

1985

Prepared by:
Davis Fitzhugh, Attorney
P. O. Box 1581
Little Rock, AR 72203

Seth Ward

KCR00979

your (1) and (2) house copy

MINUTES OF MEETING

BOARD OF DIRECTORS

MADISON FINANCIAL CORPORATION

September 11, 1985

The Board of Directors of Madison Financial Corporation met on September 11, 1985, at 1:00 p.m. at the office at 16th and Main Streets, Little Rock, Arkansas. All directors were present. The minutes of the previous meeting were read and approved as recorded.

Chairman McDougal introduced the first order of business before the board: the purchase of approximately 400 acres for a mobile home development.

The acreage, located on 145th Street, (near Pratt Road), is to be proposed in conjunction with Castle Industries, a mobile home manufacturer. The estimated cost of the land is approximately \$600,000.

After a lengthy discussion, the Board unanimously approved the purchase of this development to be known as Castle Grande Estates.

There being no further business, the meeting was adjourned.

Chairman

Betty Wright: (202) 638-2121

During that period of time →

198 — — fundraiser — alot of money

→ Southern, BC set up w/ Jim McDougall —

White Water → Webb — given to Webb —
~~Big & Little Joe~~ 11 boxes
 2

Spoke w/ Bob Nash

— ~~the~~ was w/ BC when he
 went to trailer on 145th St. and

{ Bishop James
 George Henry
 Shuter

992

MEMO

December 12, 1985

TO: Davis Fitzhugh

FROM: Jim McDougal

We should have had Seth deed the building to Madison Financial Corporation and MFC deed it to you. Is this the way it was handled?

JH/ss

TO: Jim McDougal

FROM: Davis Fitzhugh

Yes, although nothing has been recorded yet, so anything can be changed. No value was set from Seth to MFC, and we need a Release Deed from the savings and loan to Seth.

DF/ss

JH 0000797 J

1985

Seth Ward
48 River Ridge
Little Rock, Arkansas 72207

September 24, 1985

Mr. James B. McDougal, President
Madison Financial Corporation
16th and Main Streets
Little Rock, Arkansas 72201

Dear Mr. McDougal:

This is to set forth our agreement concerning the property commonly referred to as all the land owned by the Industrial Development Company of Little Rock and certain improvements thereon.

On or about the 13th day of September, 1985, Madison Guaranty Savings and Loan Association agreed to acquire all of the Industrial Development Company of Little Rock's property except the grounds and building commonly referred to as the Timex Building. In the agreement Madison has the right to assign its rights to any entity or individual. As part of our agreement, I have agreed to take title to all of the assets of the aforementioned property that is located immediately north of 145th Street, the water and sewer improvements, and the sewer treatment ponds, including the one located south of 145th Street. Madison Guaranty Savings and Loan Association will agree to lend me the purchase price for this property secured by a mortgage of those parcels and the sewer and water works. Madison Guaranty will pay \$35,000.00 to me to have an option for at least 270 days from the date of acquisition to purchase the property from me at any time, in whole or in part, for at least the pro rata amount of the note plus all accrued interest, except one parcel described as follows:

PLAINTIFF'S
EXHIBIT

4

87-7590

Approximately 22 1/2 acres located and referred to as the Northeast Quadrant of the Interchange of Highway 65 and 145th Street. More specifically described in the attached legal description which is a part of this agreement.

It is the intention of both Madison and myself to attempt to develop all the property acquired from I.D.C. and sell it as quickly as possible. If the property or any portion thereof is sold during the 270 day period, the sale price will be mutually approved by me and Madison Financial Corporation. The proceeds of the sale will be applied toward the promissory note, less a 10% sales commission to be paid to me. At Madison's discretion,

SW1-005

Mr. James G. McDougal
September 24, 1985
Page -2-

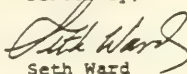
any particular piece of property may be deeded back to Madison prior to the execution of a sales transaction.

It is also agreed, in addition to the salary I am receiving from Madison Financial Corporation, I will receive 10% sales commission on all property sold, regardless who sells it, except residential property that will be located south of 145th Street, in which case I will receive 4% commission if sold by any other person.

During the term of the option period, all of the net revenues of the water works and sewer department shall be forwarded directly to Madison Guaranty for application toward the note, unless such facilities are sold sooner. Madison Financial Corporation will also be responsible for all taxes, special assessments, dues, insurance premiums, etc. during the period of this option.

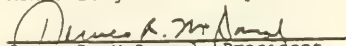
I would appreciate your acknowledging and agreeing to the terms of the letter of agreement.

Sincerely,



Seth Ward

Acknowledged and accepted:


James B. McDougal, President
Madison Financial Corporation

MEMORANDUM

TO: Vincent Foster, Jr.
FROM: David L. Williams
DATE: November 20, 1986
RE: FSLIC Representation

Based upon a quick, informal survey with selected members of the firm, we have had either to withdraw from representation of present clients or decline representation of the following prospective clients due to our representation of the FSLIC:

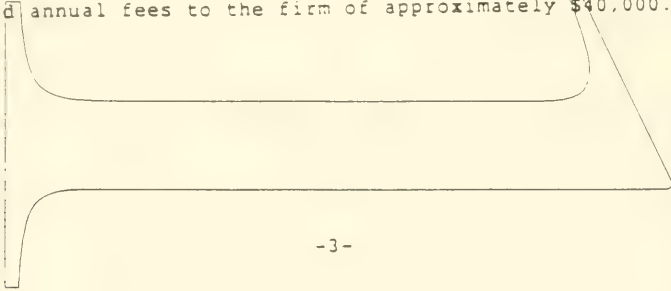
REDACTED





REDACTED

9. Madison Guaranty Savings and Loan. Due to our representation of FSLIC, we have withdrawn from representation of Madison, which had been a previous client of ours generating estimated annual fees to the firm of approximately \$40,000.



LAW OFFICES OF
ROSE LAW FIRM
 A PROFESSIONAL ASSOCIATION
 120 EAST FOURTH STREET
 LITTLE ROCK, ARKANSAS 72201
 PHONE (501) 378-0131

1 hrc 2.731
 rtd 468
 rdt 262

CLIENTS: 97252

MARION GUARANTY SAVINGS/LOAN
 MR. JOHN LATIMER, PRESIDENT
 14TH AND MAIN STREETS
 LITTLE ROCK, AR 72201

JANUARY 3, 1986

INV# 9389

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #71-0438814) - RETURN THIS STUB WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED THROUGH JANUARY 30, 1986 BY W. P. CLINTON, T.
 THRASH, P. DONVAN, K. SMELIN AND J. BIRCH:

MATTER: 5 - I.D.C.

REVIEW CONTRACT FOR SALES; TELEPHONE CONFERENCE WITH SETH WARD AND CHARLIE
 COOK; DARYL DOVER, ALTON BOWEN AT BEACH ABSTRACT; PEGGY ROGERS AND STEVE
 WADES MAKE CHANGES IN DOCUMENTS; REVIEW CHANGES IN AGREEMENTS; CORRESPONDENCE
 TO ALL PARTIES; ATTEND I. D. C. BOARD MEETING; PREPARE CORPORATE
 RESOLUTIONS; REVIEW TITLE COMMITMENTS; ATTEND CLOSING; REVIEW BILL OF
 ASSURANCES; MEETINGS WITH SETH WARD, BOB WILSON AND CHARLIE COOK; RESEARCH
 ON WHAT APPROVALS, PERMITS, ETC., ARE NECESSARY TO OPERATE SEWER AND WATER
 FACILITIES; MULTIPLE TELEPHONE CONFERENCES WITH STATE AND COUNTY AGENCIES;
 MEET ABOUT UTILITY STATUS; CONFERENCES WITH SETH WARD REGARDING PURCHASE
 FROM BRICK LILE AND PROPOSED INDUSTRIAL DEVELOPMENT ON SITE; RESEARCH INTO
 STATE LAW GOVERNING LIQUOR PERMITS; RESEARCH AT COUNTY CLERK'S OFFICE AND
 ELECTION COMMISSION; TELEPHONE CONFERENCES WITH ELECTION COMMISSION;
 NUMEROUS TELEPHONE CONFERENCES WITH DARYL DOVER

TOTAL FOR SERVICES \$4,551.50

DISBURSEMENTS

ONE COUNTY MAP 2.35
 XEROX COPIES 12.50

DISBURSEMENTS TOTAL \$13.85

TOTAL MATTER 5: \$4,470.35

A/R
 transfer

PAID 4670.35
 CK #
 DATE 1-30-86

ROSE LAW FIRM

January 30, 1986
Rose Bill to Madison Guaranty S&L
Matter: IDC

999

	Standard Value	Difference	January Amount to Bill	September (\$639) and October (\$550) Bills	Actual Amount Billed
Hillary Clinton	\$912.50 7.3 hours	\$1818.75 14.55 hours	\$2731.25 21.85 hours		
Richard Donovan	\$468.75 6.25 hours	-0-	\$468.75 6.25 hours		
Davis Thomas	\$262.50 3.5 hours	-0-	\$262.50 3.5 hours		
TOTAL	\$1643.75	\$1818.75	\$3462.50	\$1189.00	\$4651.50

HILLARY CLINTON'S IDC BILLINGS

DATE	TIME BILLED	AMOUNT	ACCOUNT BILLED
11/14/85	.5 hours	\$ 62.50	GENERAL
11/20/85	1.0 hours	\$ 125.00	GENERAL
11/26/85	1.0 hours	\$ 125.00	STOCK OFFERING
12/4/85	.5 hours	\$ 62.50	IDC
12/6/85	.3 hours	\$ 37.50	IDC
12/10/85	.5 hours	\$ 62.50	IDC
12/11/85	.5 hours	\$ 62.50	IDC
12/19/85	.5 hours	\$ 62.50	IDC
12/20/85	1.0 hours	\$ 125.00	IDC
12/23/85	1.0 hours	\$ 125.00	IDC
12/24/85	1.0 hours	\$ 125.00	IDC
12/26/85	.5 hours	\$ 62.50	LTD PARTNERSHIP
1/7/86	1.0 hours	\$ 125.00	IDC
1/14/86	1.0 hours	\$ 125.00	IDC
2/17/86	.5 hours	\$ 62.50	IDC
2/28/85	.8 hours	\$ 100.00	IDC
3/3/86	.5 hours	\$ 62.50	IDC
3/10/86	.3 hours	\$ 37.50	IDC
4/7/86	.2 hours	\$ 70.00	IDC
5/1/86	2.0 hours	\$ 280.00	GENERAL
6/10/86	.4 hours	\$ 56.00	GENERAL
SUBTOTAL	15.0 HOURS	\$ 1,956.00	
UNKNOWN	14.5 HOURS	\$ 1,818.75	Reflected in 1/86 Billing
TOTAL	29.5 HOURS	\$ 3,774.75	

ROSE LAW FIRM IDC BILLINGS

ROSE PERSONNEL	TIME BILLED	DOLLAR AMOUNT BILLED	% OF TOTAL ROSE IDC BILLINGS
RICHARD DONOVAN	22.7 hours	\$1,475.50	20%
THOMAS THRASH	12.4 hours	\$1,189.00	16%
R. DAVIS THOMAS	1.2 hours	\$ 352.50	5%
BECKY ARNOLD (non-attorney)	8.3 hours	\$ 332.00	5%
UNIDENTIFIED	Hours not identified	\$ 142.50	2%
HILLARY CLINTON	29.5 hours	\$3,774.75	52%
TOTAL		\$7,264.75	100%

MEMORANDUM

TO: Hillary Rodham Clinton
FROM: Richard T. Donovan
DATE: January 3, 1986
RE: Madison Guaranty Savings & Loan--"Wet"/"Dry" Issue

I. ISSUE PRESENTED

Given the location of the proposed site for the new brewery is the area "wet" or "dry?"

II. CONCLUSION

The proposed location for the brewery is within the old Union Township which was voted "dry" in 1953. Even though Union Township is no longer in existence and was incorporated into the larger Big Rock Township, the geographic area that was the old Union Township would probably retain its "dry" status. Moreover, the results of the election, as certified by the Election Commissioners and compiled in an order by the Pulaski County Court Judge, is on record with the County Clerk and in compliance with Arkansas' local option law, Ark. Stat. Ann. § 48-809.

MEMO

February 7, 1986

TO: Jim Guy Tucker

FROM: Jim McDougal

It looks like our township is dry. Attached is a legal opinion Seth got from his attorney.

JM/ss

Att:

Pete-

I visited with Lt. Ward - gave him a copy of your memo and with Ken Sherman. Please see Ken about a strategy to approach the ABC to argue the "dissolved township" theory.

Thanks,

Hillary

Chavez Madison County

10C

MEMORANDUM

TO: Hillary Clinton
FROM: Rick Donovan
DATE: February 17, 1986
RE: Madison Guaranty Savings & Loan/IDC

I. FACTS

Madison Guaranty Savings & Loan Association ("Madison Guaranty") purchased property ("IDC Development") owned by the Industrial Development Company of Little Rock ("IDC"). Industrial Services Company ("ISC"), a wholly owned subsidiary of IDC, furnished sewer and water service to a number of patrons who obtained their title directly or indirectly through the IDC chain of title. These patrons can be considered "residents" of the IDC Development. Madison Guaranty purchased ISC's sewer and water service and continues to furnish those services to various patrons within the IDC Development.

Madison Guaranty/IDC would like to sell water to a business outside the IDC Development and also to another real estate development, Maple Creek.

II. QUESTION PRESENTED

Is or should Madison Guaranty/IDC become a public utility and what is the effect of that characterization and can Madison

Guaranty/IDC sell water to a business outside the IDC Development and to another real estate development, Maple Creek?

III. CONCLUSION

Madison Guaranty/IDC is a public utility and as such is governed by various state laws and regulations. However, for purposes of the jurisdiction of the Arkansas Public Service Commission ("PSC"), Madison Guaranty/IDC would have to either submit itself to the jurisdiction of the PSC through a declaratory judgment action before the PSC or await PSC scrutiny in the event a patron complains to the PSC regarding rates charged or services rendered by Madison Guaranty/IDC. Many small water and sewage companies such as Madison Guaranty/IDC never become regulated by the PSC as "public utilities" even though they fall within the statutory definition.

Even if Madison Guaranty/IDC does not submit itself to or become regulated by the PSC, it is required to obtain licenses and permits from the Arkansas Board of Health and the Arkansas Pollution Control System.

Assuming an expansion of water and sewer services to customers outside the IDC Development does not impede or impair services to present patrons, Madison Guaranty/IDC is free to extend its services beyond the IDC Development.

IV. DISCUSSIONA. MADISON GUARANTY/IDC APPEARS TO BE A PUBLIC UTILITY.

One question raised is whether or not Madison Guaranty/IDC should become a public utility and what the effect of such a characterization would be. Under the common law and the Arkansas Legislature's statutory definition of a "public utility," Madison Guaranty/IDC, by its operation of the waterworks and sewer plant at the IDC Development, would appear to be a "public utility."

Generally speaking, a public utility has been described as a business organization which regularly supplies the public with some commodity or service such as electricity, gas, water, transportation, or telephone or telegraph service. 73B C.J.S. Public Utilities § 2. A well recognized test of whether an entity is a public utility is whether or not that entity holds itself out, expressly or impliedly, as engaged in the business of supplying a product or service to the public, as a class, or to any limited portion of it, as distinguished from holding itself out as serving or ready to serve only particular individuals. Natural Gas Service Co. v. SERV-YU Cooperative, 70 Ariz. 235, 219 P.2d 324 (1950).

The Arkansas Legislature has statutorily defined a "public utility" for purposes of state regulation of public utilities by the PSC. Ark. Stat. Ann. § 73-201(d)(2) (Repl. 1973) provides:

The term "public utility," when used in this Act, includes persons and corporations, or their lessees, trustees, and receivers, now or hereafter owning or operating in this state, equipment or facilities for:

(2) Diverting, developing, pumping, impounding, distributing, or furnishing water to, or for, the public for compensation.

. . .

(7) Maintaining a sewage collection system and/or a sewage treatment plant, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and other appurtenances necessary or useful for the collection and/or treatment, purification and disposal of the liquid and solid waste, sewage, night soil and industrial waste. Provided, nothing in this paragraph shall be construed to include sewerage facilities and equipment of cities and towns in the definition of public utility.

It is a fact question whether Madison Guaranty/IDC meets the statutory definition of a "public utility" and falls within the common law definition of a "public utility." From the facts presented, it would appear Madison Guaranty/IDC meets these definitions. It is irrelevant to the question of whether Madison Guaranty/IDC is a "public utility" that it has not submitted itself to the regulatory jurisdiction of the state or that the state has not yet assumed control and jurisdiction or has failed to or refused to assume such control over the corporation. Wisconsin Tract Co. v. Green Bay Canal Co., 188 Wis. 54, 205 N.W. 551 (1925). Similarly, the fact that the conduct of the enterprise in the past has been considered by the

enterprise and the patrons as a purely private contract is not conclusive on the issue of whether or not the entity is a "public utility." Eagle Bus Lines v. Illinois Commerce Commission, 3 Ill. 2d 66, 119 N.E.2d 915 (1954). Given the determination that Madison Guaranty/IDC is a "public utility" for purposes of supplying water and sewer to the various residents of the real estate development, the next question is what is the effect of being a "public utility."

B. WHAT IS THE EFFECT OF BEING A PUBLIC UTILITY?

The first effect of being a "public utility" is that the utility comes within the jurisdiction of the PSC. As mentioned above, it would appear Madison Guaranty/IDC meets the statutory definition of a "public utility" for purposes of PSC jurisdiction. However, I had a telephone conversation with a member of the PSC legal staff to determine, as a matter of practice, whether Madison Guaranty/IDC comes within the PSC's jurisdiction. I was informed that there are many private, non-franchised companies providing water and sewage facilities to residents of unincorporated real estate developments who are not regulated by the PSC. I was informed that these providing companies rarely come to the attention of the PSC unless a patron lodges a formal complaint to the PSC regarding rates charged or services rendered. At that point, the PSC makes an initial factual determination as to whether the providing company

is a "public utility" subject to the PSC's jurisdiction. The only other way the providing company becomes a "public utility" for purposes of PSC jurisdiction is to bring a declaratory judgment action before the PSC for such a determination. The PSC legal staff could not recall such a small providing company bringing such an action because of the costs involved and because those companies would not readily submit themselves to perceived burdensome regulation. For the purposes of this memo, assuming Madison Guaranty/IDC becomes a "public utility" regulated by the PSC, the following requirements must be met.

The first requirement entails regulation of rate making. Ark. Stat. Ann. § 73-204 requires that the rates of "public utilities" be reasonable and:

(b) Every public utility shall furnish, provide and maintain such adequate and efficient service instrumentalities, equipment and facilities and shall promote the safety, health, comfort, requirements and convenience of its patrons, employees and the public.

All rates must be billed in accordance with PSC schedules. Ark. Stat. Ann. § 73-205.1. Violation of this billing requirement can result in a civil sanction of \$1,000.00. Moreover, each instance of violation shall constitute a separate violation. Provided, however, that in the case of a continued violation, each day's continuance shall not be deemed a separate violation. Ark. Stat. Ann. § 73-205.2 (Supp. 1985). All rates

must be based on the reading of meters and all bills and statements must show the number of units charged for with an accompanying monetary sanction for violation of up to \$50.00. Ark. Stat. Ann. § 73-212 (Repl. 1957). It is also illegal for a public utility to charge a disconnection fee with an accompanying monetary sanction for violation of up to \$50.00. Ark. Stat. Ann. § § 73-204.1, 73-204.3 (Repl. 1957).

In addition, if the IDC Development ever became franchised as a municipality, the utility would be subject to purchase by the municipality. Ark. Stat. Ann. § 73-245 provides:

Any municipality shall have the power, subject to provisions of this act, to acquire by purchase or otherwise, or construct and operate a public utility plant and equipment, or any part thereof, for the production, transmission, delivery or furnishing of any public service.

If the utility and the municipality cannot reach a decision as to what is "just compensation" for the purchase of the utility, it will be determined by the PSC. Ark. Stat. Ann. § 73-247.

While many small water/sewer providers to unincorporated residential developments never become regulated by the PSC, there exists a certain danger in not complying with the above outlined requirements. Civil sanctions can be imposed by the PSC in the event of a formal complaint filed by a patron followed by a PSC determination that the offending company is a

"public utility." On the other hand, costs saved by non-regulation may make the risks palatable.

Regardless of whether Madison Guaranty/IDC is a "public utility" for purposes of the PSC outlined above, Madison Guaranty/IDC is required to obtain licenses and permits from the Arkansas Board of Health and the Arkansas Pollution Control Commission in order to operate the water and sewer treatment facilities.

C. MADISON GUARANTY/IDC IS REQUIRED TO OBTAIN A WATER-WORKS OPERATOR'S LICENSE FROM THE ARKANSAS STATE BOARD OF HEALTH.

Regardless of whether or not Madison Guaranty/IDC is considered a "public utility" for purposes of regulation by the PSC, it is required to obtain a water-works operator's license from the Arkansas State Board of Health in order to avoid possible criminal penalties.

Ark. Stat. Ann. § 71-1701 provides:

In order to safeguard the public health, all operators of municipal public water supplies from which water is sold, distributed, or otherwise offered for human consumption, whether such water supplies be publicly or privately owned and operated, shall be duly licensed and certified as competent by the Arkansas State Board of Health under provisions of this Act [§§ 71-1701 - 71-1713] and under such rules and regulations as said Board may adopt under the provisions of this Act.

The Act defines an "operator" as:

Any person who, during the performance of his regular duties, exercises individual judgment by which either directly or indirectly the safety, quality and quantity of water delivered from the water supply system might be affected. Ark. Stat. Ann. § 71-1702.

Although the statute states that such a water-works operator's license is required of a municipal water-works, telephone conversations with the Arkansas State Board of Health reveal that it would consider the Madison Guaranty/IDC water works which delivers water to the residents of a real estate development to be within the purview of Ark. Stat. Ann. § 71-1701. The Act also provides certain penalties for violation of the Act. As stated at Ark. Stat. Ann. § 71-1712:

As soon as this Act becomes a law, it shall be unlawful for any person, municipality, political subdivision, corporation, or any authority that furnishes water for domestic consumption to operate any type of water system unless the operator in charge is duly licensed and certified competent by the Arkansas State Board of Health, and it shall be unlawful for any person to perform the duties of such an operator without being duly licensed or to falsely represent himself as a licensed operator.

The Act provides for penalties of \$10 to \$100 and up to 30 days in the County Jail for violations.

D. MADISON GUARANTY/IDC IS REQUIRED TO OBTAIN A WASTE WATER TREATMENT PERMIT.

In addition to the water-works operator's license, the state would also require Madison Guaranty/IDC to obtain a waste water

treatment permit if the sewage system results in the discharge into any waters of the state. Ark. Stat. Ann. § 82-1908 provides:

It shall be unlawful for any person to engage in any of the following acts without first having obtained a written permit from the Commission:

(a) To construct, install, modify or operate any disposal system or any part thereof or any extension or addition thereto that will discharge into any waters of the state.

Ark. Stat. Ann. § 82-1902 defines "disposal system" as:

A system for disposing of sewage, industrial wastes, and other wastes including sewer systems and treatment works. "Sewer system" means pipelines, conduits, pumping stations and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial wastes or other wastes. "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned herein, installed for the purpose of treating, stabilizing or disposing of sewage, industrial waste, or other wastes.

The question is whether or not the Madison Guaranty/IDC sewage system results in the discharge into any waters of the state. From conversations with the Arkansas Pollution Control Commission, invariably most disposal systems result in discharge into the waters of the state. However, this must be determined before Madison Guaranty/IDC becomes required to obtain the permit described above.

Ark. Stat. Ann. § 92-1963 provides for the obtaining of licenses from the Arkansas Pollution Control Commission under the rules and regulations of that Commission for the operation of a sewage disposal system.

E. MADISON GUARANTY/IDC MAY EXTEND WATER AND SEWAGE SERVICES TO COMPANIES OR RESIDENCES OUTSIDE THE DEVELOPMENT.

Even if Madison Guaranty/IDC would be considered a "public utility" for purposes of PSC jurisdiction and for other common law purposes, it can extend its services to other residences or businesses. A public utility may enter into contracts when reasonable and when not shown to have any tendency to injure the public it is now servicing. Twin City Co. v. Harding Glass Co., 283 U.S. 353, 51 S.Ct. 476, 75 L.Ed. 1112 (1931). This assumes the other potential patrons are not within a municipality which has given a franchise to another water-works operator. In discussions with the PSC legal staff, I was informed such an extension of services is normal and expected among PSC regulated water-works utilities and requires no prior commission approval unless a patron lodges a formal complaint that the extension of services resulted in diminished services to existing patrons.

V. SUMMARY

To summarize, Madison Guaranty/IDC, in all likelihood, meets the statutory and common law definition of a "public utility."

However, many small providing companies such as Madison Guaranty/IDC are never regulated by the PSC. In order to incur the PSC's active regulation, Madison Guaranty/IDC would bring a declaratory judgment action before the PSC. Otherwise, the PSC would never become aware of Madison Guaranty/IDC unless a patron lodged a formal complaint. PSC jurisdiction would entail substantial regulation particularly regarding rate making. The risk of non-compliance with PSC regulations is civil sanctions.

Notwithstanding PSC jurisdiction, Madison Guaranty/IDC is required to obtain licenses and permits from the State Board of Health and the Pollution Control Commission.

Finally, Madison Guaranty/IDC may extend its services to patrons outside the IDC Development assuming the new patrons are not within a municipality and such extension does not adversely affect service to existing patrons.

1017

ROSE LAW FIRM
A PROFESSIONAL ASSOCIATION
120 EAST FOURTH STREET

LITTLE ROCK, ARKANSAS 72201
PHONE (501) 378-9131

CLIENT: 95262

MADISON GUARANTY SAVINGS/LOAN
14TH AND MAIN STREETS
LITTLE ROCK, AR 72202

ARCH 1, 1982
INVOICE # 900

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #71-0439014) RETURN THIS STUB WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED IN CONNECTION WITH:

MATTER:

I.D.C.

COPY u/A

01/15/86 J. BIRCH

RECEIPT AND REVIEW OF R. DONOVAN MEMO
ON MANUFACTURING FACILITY; CONFERENCE
WITH R. DONOVAN, M. CLINTON AND K.
SHEMIN REGARDING PERMIT TO MANUFACTURE
BEER IN "DRY" TOWNSHIP

01/17/86 R. ARNOLD

RESEARCH AT COUNTY COURTHOUSE

01/19/86 R. DONOVAN

REGARDING OLD UNION TOWNSHIP

01/22/86 R. DONOVAN

RAW LEXIS SEARCH FOR CASES DEALING
WITH TOWNSHIP DISSOLUTIONS
RESEARCHED ISSUE OF EFFECT OF TOWNSHIP
DISSOLUTION ON "WET/DRY" STATUS

02/10/86 R. DONOVAN

DRAFTED MEMO
TELEPHONE CONFERENCE WITH PULASKI CO.
ELECTION COMM. REGARDING BOUNDARIES OF
OLD UNION TOWNSHIP; TELEPHONE

02/11/86 R. DONOVAN

CONFERENCE WITH SECRETARY OF STATE
REGARDING SAME; MEMO TO R. ARNOLD
REGARDING COUNTY COURT RESEARCH

02/12/86 R. DONOVAN

RESEARCHED ISSUE OF PUBLIC UTILITY
SUPPLYING OF WATER

02/13/86 R. DONOVAN

CONTINUED RESEARCH REGARDING PUBLIC
UTILITY QUESTIONS; TELEPHONE CONFERENCE
WITH PSC LEGAL STAFFS REGARDING
MEMO

CONTINUED DRAFTING OF MEMO REGARDING
PUBLIC UTILITIES

PAID 993.25

TOTAL FOR SERVICES

993.25

CK #

DATE 3-7-86

DISBURSEMENTS

PHOTOCOPY EXPENSE (.14)

2.05

PHOTOCOPY EXPENSE (OUTSIDE OFFICE)

1.00

DISBURSEMENTS TOTAL

33.25

ROSE LAW FIRM

DKSN029013

MEMORANDUM

TO: Hillary Clinton
FROM: Rick Donovan R.D.
DATE: March 4, 1986
RE: Madison Guaranty Savings and Loan/IDC

I. QUESTION PRESENTED

Does the fact that Madison Guaranty/IDC's potential water customers are within the Little Rock corporate city limits preclude the extension of services to those customers by Madison Guaranty/IDC?

II. CONCLUSION

Merely because the potential water customers are within the Little Rock corporate city limits does not preclude extension of water services by Madison Guaranty/IDC to those potential customers.

III. DISCUSSION

The question raised was whether or not the fact that the potential water customers of Madison Guaranty/IDC were within the corporate city limits of Little Rock would preclude

RLF2 02928

extension of services to those customers. The concern was that the City of Little Rock Water Works would have the exclusive right to extend water services to patrons within the corporate city limits.

First of all, it should be pointed out that there is no state statute or municipal ordinance which grants the City of Little Rock Water Works such an exclusive right. Nor is there any case law which would establish an exclusive right. On the contrary, the common law precludes the municipality from enforcing such an exclusive right.

In researching this issue, I first had a telephone conversation with the legal staff of the Public Service Commission ("PSC"). I was informed by the legal staff of the PSC, when presented with the question addressed herein, that water utilities in Arkansas have no "allocated territories" such as electricity and natural gas. Thus, according to the PSC staff, there is no such thing as "exclusive territory" for a water utility and water utilities are free to offer services where they choose.

I then had a telephone conversation with a manager at the Little Rock Water Works. He informed me that persons within the City of Little Rock corporate city limits are free to obtain water from whatever source they want to. He explained that it is the policy of the City of Little Rock Water Works to install plant back up facilities, sources of supplies, treatment plants

and transmission lines, and it is then up to the individual property owner to install distribution lines to "tie in" to city water. This can be done several different ways, but the usual method is for a subdivision to form a water improvement district. The City of Little Rock Water Works would work closely with the improvement district to see that city water is made available to the subdivision. The Little Rock Water Works spokesperson did state that they discourage private real estate development companies from providing water to its patrons because of the fear that people will not be getting the best service available.

As a general common law rule, a municipality has no authority to enact and enforce ordinances which are designed to compel everyone within the city limits to use municipally-supplied water, if and when available, and to prevent absolutely the repair, alteration, improvement, or operation of a privately owned water system. That is not to say that a municipality cannot use it's police powers to protect the health and safety of its citizens to prohibit the sale of water which is dangerous to the public health. 78 AM JUR. 2d WATER WORKS AND WATER COMPANIES § 3. Thus, in Midway v. Midway Nursing and Convalescent Center, Inc., 230 Ga. 777, 195 S.E.2d 452 (1973), the Georgia Supreme Court held that there is no authority, statutory or common law, whereby a city could compel the use of city water or connection to a city water system.

In fact, it is a general common law rule that a municipality cannot be compelled to extend its water to an entirely new subdivision within its territorial limits, absent any arbitrary or fraudulent conduct on the part of the city. 78 AM JUR. 2d WATER WORKS AND WATER COMPANY § 21. Thus, in Crownhill Homes, Inc. v. San Antonio, 433 S.W.2d 448 (Texas Civil Appeals, 1968), the Texas appellate court rejected the plaintiff real estate developer's argument that the City of San Antonio be compelled to supply city water to newly built subdivision within the corporate city limits. It was up to the real estate developer to find alternative methods for supplying water to the subdivision through a privately owned water system.

IV. SUMMARY

To summarize, merely because the potential Madison Guaranty/IDC water customers are within the Little Rock corporate city limits, Madison Guaranty/IDC is not precluded from extending its water services to those potential patrons. Not only is there no state statute or city ordinance which would preclude such an extension of Madison Guaranty/IDC's water services, but the common law general rule is that a municipality has no authority to enact an ordinance or to require persons within its territorial limits to use municipally supplied water to the exclusion of a privately owned system.

VOUCHER #

342
4391

KEYED

ACCOUNT #	ACCOUNT NAME	DEBIT	CREDIT
2308-1	165 - CG liability	1,892.92	
2630	N/P - 165 L		1,892.92

DESCRIPTION

Rose Law firm - 12C work

PAID BY

y

DATE PUT ON GENERAL LEDGER

7/25/86

1024

 MFC 93 ✓
 VOUCHER # V 4372

 Madison/Rose
 18

ACCOUNT #	ACCOUNT NAME	DEBIT	CREDIT
2630	NIP. AGSL		5650.5
1960	ELD	982.50	
238-1	Res for Res - util. CG	4670.35	

DESCRIPTION

Rose Law firm - 1/18/19

BY



DATE PUT ON GENERAL LEDGER

2/19/56

TOTAL

5,742.11

LESS PAYMENTS

0.00

BALANCE RETAINED

5,742.11

AGREEMENT

This Agreement made and entered into this ____ day of August, 1985, by and between INDUSTRIAL DEVELOPMENT COMPANY OF LITTLE ROCK, an Arkansas corporation ("IDC"), MADISON GUARANTY SAVINGS & LOAN ASSOCIATION, an Arkansas state chartered savings and loan association ("Madison" which reference shall include any affiliate of Madison to whom Madison might elect to assign its rights hereunder) and UNION NATIONAL BANK OF LITTLE ROCK, WORTHEN BANK AND TRUST COMPANY, N.A. and FIRST COMMERCIAL BANK, N.A. (all national banking associations and all hereafter collectively referred to as "the Banks").

In consideration of the mutual covenants and agreements herein contained, the parties do hereby agree, each with the other, and each intending to be legally and contractually bound, as follows:

1. Factual Matters. IDC is the owner of a substantial amount of real and personal property all located and having a situs in Pulaski County, Arkansas. References herein to the "IDC Property" refer to all such real and personal property owned by IDC described in Exhibit "1" attached hereto excepting only the so called "Timex Building" more particularly described on Exhibit "2" hereto and the "Cattle Barn

~~Note" also more particularly described on Exhibit "2"~~

Hereto. The Banks hold valid, perfected and enforceable encumbrances which encumber all of the IDC Property as well as the Timex Building ~~and the Cattle Barn Note~~ as collateral security for obligations owed by IDC to the Banks which obligations, including interest through the 31st day of July, 1985, total \$2,159,739.

2. Agreement to Purchase and Sell. Madison agrees to purchase and IDC agrees to sell to Madison ~~all of the IDC Property.~~ ^{*except the Timex Building and the Cattle Barn Note*} The agreed upon purchase price is \$1,750,000.00, all of which shall be payable in cash upon closing. IDC has recently contracted to sell a parcel of the IDC Property for a motel site ("Motel Site"). The property comprising the Motel Site is described on Exhibit ^{"2"} ~~"3"~~ hereto. The Motel Site would otherwise have been a part of the IDC Property ~~to~~ be conveyed to Madison but, in view of the already contracted for sale which is anticipated to close before the closing of the purchase and sale which is the subject of this Agreement, Madison has agreed that ~~to the extent Madison receives a minimum of \$150,000.00 from the Motel Site sale proceeds,~~ IDC may retain 25% of the net sale proceeds received by IDC as a result of

the Motel Site sale, ~~the sale of the Motel Site~~ The

\$150,000.00 minimum payment to Madison and any

remaining net sale proceeds. After deducting the IDC

of 25% of the net sale proceeds, the remaining 75% of the net sale proceeds ^{not sale} retention ~~not to exceed \$50,000.00~~ will be delivered to

Madison at the closing of this transaction or, at

Madison's option, credited against the purchase price.

If Madison elects to receive a credit against the

purchase price, then the ^{75% of net sale} proceeds allocated to Madison

will be delivered to the Banks at closing. Conveyance

shall be made to Madison by IDC by general Warranty

Deed subject to recorded restrictions and easements.

~~Subject to the terms, conditions and covenants of the mortgage, the Seller shall, prior to closing, of a commitment, insure~~

Madison's fee simple interest in the IDC Property

subject only to recorded restrictions and easements. If

any ~~the title insurance will reflect good and~~

merchantable title to the IDC Property in IDC. If

objections are made to title, Seller shall have a

reasonable time to meet the objections. Taxes and

special assessments due on or before the closing date

shall be paid by IDC. Current general taxes and

special assessments shall be prorated as of the closing

date based upon the last tax statement. Rental

payments shall be prorated as of the closing date.

Madison certifies that it has inspected all of the IDC Property and is not relying upon any warranties, representations or statements of IDC as to age or physical condition of improvements ~~which are~~

~~shown on the plat which will be located from a local~~

~~inspection of the property.~~ The risk of loss or damage

to the property by fire or other casualty occurring up to the time of transfer of title on the closing date is assumed by IDC. IDC shall vacate the property and

deliver possession to Madison on the closing date. IDC shall pay for the title insurance ~~and shall pay the~~

~~real estate broker's commission due to Hathaway &~~

~~Company for services rendered with respect to this~~

~~sale.~~ All other closing costs shall be paid by the

parties in accordance with custom and usage for

apportioning such expenses between Sellers and Buyers

in like transactions in Pulaski County, Arkansas.

Madison shall be responsible for ~~only~~ those

commissions, fees, finder's fees, or other such fees

contracted for by Madison with third parties and,

specifically, with respect to the property,
Madison shall ~~not~~ be responsible ~~or obligated in any~~
and shall pay

way for the commission payable to Hathaway & Company.

~~described above.~~ The closing shall occur not

1.
by order of:

Change!

(Seth Ware
had agreed
to settle
with
Hathaway)

as soon as practicable

later than ~~the date of the sale~~. Time is of the essence.

3. Agreements Between the Banks and IDC. IDC shall pay to the Banks (a) the entire net proceeds of sale received by IDC, and (b) Madison's share of the net sale proceeds of the Motel Site, as described in the preceding paragraph, if Madison elects to receive a credit against the purchase price for the IDC Property instead of receiving its share of the net sale proceeds of the Motel Site. In consideration of said payments, the Banks agree to release the encumbrances which they hold on the IDC Property in a form satisfactory to Madison. It is understood and agreed, however, that the Banks will retain their encumbrances on the Timex Building ^{and Land} and on the Cattle Barn Note. IDC agrees that it will utilize its share of the net sale proceeds of the Motel Site to be received by it ^{and proceeds of the sale of the Cattle Barn} to renovate, repair and restore the Timex Building ^{and Land} to good condition. IDC agrees that it will undertake to cause such renovation, repairs and restoration to take place as speedily as is reasonably possible and will immediately commence efforts to sell the Timex Building ^{and Land} and the Cattle Barn Note (separately or together) for the best price obtainable for each such asset. IDC will not become

will agree to advance to IDC such funds as he necessary to make the Timex building if the proceeds of the motel site sale and the 1627% sale

8

contractually obligated to sell either such asset >
without the advance written consent and approval of the
Banks which consent and approval will not be
unreasonably withheld. Upon sale of either or both of
the Timex Building and the Cattle Barn Note, IDC will
pay all expenses incident to such sale and the net
proceeds of each such sale shall be shared equally by
IDC and the Banks. IDC covenants ~~to~~

~~and to use its best efforts to obtain all necessary corporate~~
Not to be
~~approvals and authorizations of the actions required of~~
IDC by this Agreement. If both the Timex Building, *and*
~~the Cattle Barn Note~~ have not been sold by

7/30/1988
~~August 1, 1988~~, then the Banks shall be
relieved of any obligations to share the proceeds
thereof with IDC and the Banks shall be free to pursue
whatever remedies are available to them to realize upon
such collateral security.

IN WITNESS WHEREOF, the parties hereto have executed this
Agreement this *19th* day of August, 1985.

INDUSTRIAL DEVELOPMENT COMPANY
OF LITTLE ROCK

By: _____

attested 30, 1986

MADISON FINANCIAL CORPORATION

By: UNION NATIONAL BANK OF LITTLE
ROCKBy:  E.V.P.WORTHEN BANK & TRUST COMPANY,
N.A.By:  V.P.

FIRST COMMERCIAL BANK, N.A.

By:  V.P.

1033

LAW OFFICE OF
ROSE LAW FIRM
A PROFESSIONAL CORPORATION

180 EAST FOURTH STREET

LITTLE ROCK, ARKANSAS 72201

PHONE (501) 378-0131

CLIENT: 98202

MADISON GUARANTY SAVINGS/LOAN
14TH AND MAIN STREETS
LITTLE ROCK, AR 72202

SEPTEMBER 20, 1985
INVOICE # 700

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #77-0488916) - RETURN THIS STATEMENT WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED IN CONNECTION WITH:

MATTER: S

I.B.C.

02/06/85 T. THRASH
02/07/85 T. THRASH

REVIEW CONTRACT FOR SALE
TELEPHONE CONFERENCES WITH SETH WARD
AND CHARLIE COOK; MAKE CHANGES IN
DOCUMENTS

05/07/85 T. THRASH

TELEPHONE CONFERENCE WITH CARYL COVEY
REVIEW CHANGES IN AGREEMENT;
CORRESPONDENCE TO ALL PARTIES

05/14/85 T. THRASH

TELEPHONE CONFERENCE WITH CARYL COVEY
AND CHARLIE COOK

05/19/85 T. THRASH

MEETING WITH SETH WARD, BOB WILSON AND
CHARLIE COOK; ATTEND 100 BOARD MEETING;
PREPARE CORPORATE RESOLUTIONS;

05/20/85 T. THRASH

TELEPHONE CONFERENCE WITH SETH WARD

TOTAL FOR SERVICES: \$475.00

DISBURSEMENTS

PHOTOCOPY EXPENSE (.15)

15.30

DISBURSEMENTS TOTAL \$15.30

TOTAL THIS STATEMENT \$490.30

U/A

PAID 654.30
CK # 179.85
DATE 11-9-85

ROSE LAW FIRM

DKSN028979

August 9 Draft

ROSE LAW FIRM

A PROFESSIONAL ASSOCIATION

ATTORNEYS

120 EAST FOURTH STREET

LITTLE ROCK, ARKANSAS 72201

TELEPHONE (501) 375-9131

TELECOMMER (501) 375-4308

J. M. ROSE

1934-1913

PHILLIP CARROLL
W. OAKIE CLAY
C. JOSEPH GIBBIS, JR.
GEORGE E. CAMPBELL
HERBERT C. RULE, III
STANLEY E. PRICE
H. WATT GREGORY, III
W. WILSON JONES
VINCENT FOSTER, JR.
WEBSTER L. HUBBELL
ALLEN W. BIRD, II
WILLIAM E. BISHOP
HILLARY RODHAM CLINTON
C. BRANTLY BUCK
TIM BOE
H. JAMES DICKET
WILLIAM H. KENNEDY, III
KENNETH R. SHERWIN
DAVID A. KNIGHT
RONALD W. CLARR

GARLAND J. GARRETT
JERRY C. JONES
THOMAS P. THRASH
CAROL S. ARNOLD
JACKSON FARROW JR.
LES R. SALEDGE
JIM HUNTER BIRCH
R. DAVIS THOMAS, JR.
DAVID L. WILLIAMS
CATHERINE LASSITER
RICHARD T. DONOVAN
MICHAEL R. JONES
MARTIN K. THOMAS
SUSAN RALSTON McLEAN
RICHARD M. MASSETT
GARY H. SPEED
J. GASTON WILLIAMSON
CHARLES W. BAKER
OF COUNSEL

August 9, 1985

Mr. Darrell Dover
Attorney at Law
HOUSE, WALLACE & JEWELL
Tower Building
Little Rock, AR 72201

Re: Madison Guaranty - IDC

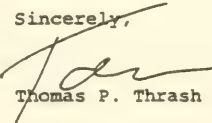
Dear Mr. Dover:

Enclosed please find a copy of the proposed Agreement between Industrial Development Company of Little Rock, Madison Guaranty Savings & Loan Association, Union National Bank of Little Rock, Worthen Bank and Trust Company and First Commercial Bank. I have marked the changes that have been made for your convenience.

If you have any questions regarding same, please do not hesitate to give me a call.

Kindest regards.

Sincerely,


Thomas P. Thrash

TPT:pdw
Enclosure

August ~~1985~~
Druff

AGREEMENT

This Agreement made and entered into this ____ day of August, 1985 by and between Industrial Development Company of Little Rock, an Arkansas corporation ("IDC"), Madison Guaranty Savings & Loan Association, an Arkansas State Chartered Savings and Loan Association ("Madison" which reference shall include any affiliate of Madison to whom Madison might elect to assign its rights hereunder) and Union National Bank of Little Rock, Worthen Bank and Trust Company, N.A. and First Commercial Bank, N.A. (all national banking associations and all hereafter collectively referred to as "the Banks").

In consideration of the mutual covenants and agreements herein contained, the parties do hereby agree, each with the other, and each intending to be legally and contractually bound, as follows:

1. Factual Matters. IDC is the owner of a substantial amount of real and personal property all located and having ^{interest} ~~title~~ in Pulaski County, Arkansas. References herein to the "IDC Property" refer to all such real and personal property owned by IDC excepting only the so called "Timex Building" more particularly described on Exhibit "1" hereto and the "Cattle Barn Note" also more particularly described on Exhibit "1" hereto.

The Banks hold valid, perfected and enforceable encumbrances which encumber all of the IDC Property as

well as the Timex Building and the Cattle Barn Note ^{as collateral for obligations owed by IDC to the Banks}

2. Agreement to Purchase and Sell. Madison agrees to purchase and IDC agrees to sell all of the IDC Property. The agreed upon purchase price is \$1,750,000.00, all of which shall be payable in cash upon closing. IDC has recently contracted to sell a parcel of property for a motel site ("Motel Site"). The property comprising the Motel Site ~~being~~ described

Planning

which is, perhaps, wholly irrelevant to the subject of this document

on Exhibit "2" hereto. The Motel Site would otherwise have been a part of the IDC Property but, in view of the already contracted for sale which is anticipated to close before the closing of the purchase and sale which is the subject of this Agreement, Madison has agreed that IDC may retain 25% of the net sales proceeds received by IDC as a result of the Motel Site sale. The remaining 75% of the net sales proceeds will be delivered to Madison at the closing of this transaction or, at Madison's option, credited against the purchase price. If Madison elects to receive a credit against the purchase price, then the 75% of net sales proceeds will be delivered to the Banks at closing. Conveyance shall be made to Madison by IDC by general Warranty Deed subject to recorded restrictions and easements. IDC shall furnish at its cost a complete abstract of title or, at IDC's option, in lieu of the abstract, a policy of title insurance. Submission of an abstract shall not constitute a waiver of this option. The abstract or title insurance will reflect good and merchantable title to the IDC Property in IDC subject only to such minor defects, not substantially adversely affecting the value of the IDC Property, as are usually found in properties of the size and quantity of the IDC Property in Pulaski County, Arkansas. If objections are made to title, Seller shall have a reasonable time to meet the objections or to furnish title insurance. Taxes and special assessments due on or before the closing date shall be paid by IDC. Current general taxes and special assessments shall be prorated as of the closing date based upon the last tax statement. Rental payments shall be prorated as of the closing date. Madison certifies that it has inspected all of the IDC Property and is not relying upon any

warranties, representations or statements of IDC as to age or physical condition of improvements. The risk of loss or damage to the property by fire or other casualty occurring up to the time of transfer of title on the closing date is assumed by IDC. IDC shall vacate the property and deliver possession to Madison on the closing date. IDC shall pay for the abstract or title insurance and shall pay the real estate broker's commission due to Hathaway & Company for services rendered with respect to this sale. All other closing costs shall be paid by the parties in accordance with custom and usage for ~~abstracting~~ ^{apportioning} such expenses between Sellers and Buyers in like transactions in Pulaski County, Arkansas. Madison shall be responsible for any commissions, fees, finder's fees, or other such fees except the commission payable to Hathaway & Company described above. *The closing shall occur not later than April 15, 1985. Time is of the essence.*

3. Agreements Between the Banks and IDC. IDC shall pay to the Banks (a) the entire net proceeds of sale received by IDC, and (b) the 75% of net sale proceeds of the Motel Site, as described in the preceding paragraph, if Madison elects to receive a credit against the purchase price for the IDC Property instead of receiving said 75% of net sale proceeds of the Motel Site. In consideration of said payments, the Banks agree to release the encumbrances which they hold on the IDC Property. It is understood and agreed, however, that the Banks will retain their encumbrances on the Timex Building and on the Cattle Barn Note. IDC agrees that it will utilize the 25% of net sale proceeds of the Motel Site to be received by it to renovate, repair and restore the Timex Building to good condition. IDC agrees that it will undertake

to cause such renovation, repairs and restoration to take place as speedily as is reasonably possible and will immediately commence efforts to sell the Timex Building and the Cattle Barn Note (separately or together) for the best price obtainable for each such asset. IDC will not become contractually obligated to sell either such asset without the advance written consent and approval of the Banks which consent and approval will not be unreasonably withheld. Upon sale of either or both of the Timex Building and the Cattle Barn Note, IDC will pay all expenses incident to such sale and the net proceeds of ^{each} such sale shall be shared equally by IDC and the Banks. IDC covenants (and the officer executing for IDC personally covenants) to use its and his best efforts to obtain all necessary corporate approvals and authorizations of the actions required of IDC by this Agreement. }

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of August, 1985.

If both the Timex Building and the Cattle Barn Note have not been sold by _____, 198____, then the Banks shall be relieved of any obligation to share the proceeds thereof with IDC and the Banks shall be free to pursue whatever remedies are available to them to realize upon such ~~non~~ collateral security.

0100D

INDUSTRIAL DEVELOPMENT COMPANY OF
LITTLE ROCK

BY: _____

MADISON GUARANTY SAVINGS AND LOAN
ASSOCIATION

BY: _____

UNION NATIONAL BANK OF LITTLE ROCK

BY: _____

WORTHEN BANK & TRUST COMPANY, N.A.

BY: _____

FIRST COMMERCIAL BANK, N.A.

BY: _____

August
14. Druett

ADP marked title

AGREEMENT

This Agreement made and entered into this 19th day of August, 1985, by and between INDUSTRIAL DEVELOPMENT COMPANY OF LITTLE ROCK, an Arkansas corporation ("IDC"), MADISON FINANCIAL CORPORATION, an Arkansas state chartered savings and loan association ("Madison" which reference shall include any entity or individual to whom Madison might elect to assign its rights hereunder) and UNION NATIONAL BANK OF LITTLE ROCK, WORTHEN BANK AND TRUST COMPANY, N.A. and FIRST COMMERCIAL BANK, N.A. (all national banking associations and all hereafter collectively referred to as "the Banks").

In consideration of the mutual covenants and agreements herein contained, the parties do hereby agree, each with the other, and each intending to be legally and contractually bound, as follows:

1. Factual Matters. IDC is the owner of a substantial amount of real ~~and personal~~ property all located and having a situs in Pulaski County, Arkansas. References herein to the "IDC Property" refer to all such real ~~and personal~~ property owned by IDC ~~described in Exhibit "1" attached hereto~~ excepting only the so called "Timex Building ^{and land}" more particularly described on Exhibit "1" hereto. ~~and the Carle Barn~~

Note" also more particularly described on Exhibit "2" hereto. The Banks hold valid, perfected and enforceable encumbrances which encumber all of the IDC Property as well as the Timex Building and the Cattle Barn Note as collateral security for obligations owed by IDC to the Banks which obligations, including interest through the 31st day of July, 1985, total \$2, __, __.

2. Agreement to Purchase and Sell. Madison agrees to purchase and IDC agrees to sell to Madison all of the IDC Property. The agreed upon purchase price is \$1,750,000.00, all of which shall be payable in cash upon closing. IDC has recently contracted to sell a parcel of the IDC Property for a motel site ("Motel Site"). The property comprising the Motel Site is described on Exhibit "3" hereto. The Motel Site would otherwise have been a part of the IDC Property to be conveyed to Madison but, in view of the already contracted for sale which is anticipated to close before the closing of the purchase and sale which is the subject of this Agreement, Madison has agreed that to the extent Madison receives a minimum of \$150,000.00 from the Motel Site sale proceeds, IDC may retain 25% of the net sale proceeds received by IDC as a result of

the Motel Site sale not to exceed \$50,000.00. The \$150,000.00 minimum payment to Madison and any remaining net sale proceeds, after deducting the IDC retention [^] not to exceed \$50,000.00 will be delivered to Madison at the closing of this transaction or, at Madison's option, credited against the purchase price. If Madison elects to receive a credit against the purchase price, then the proceeds allocated to Madison will be delivered [^] to the Banks at closing. Conveyance shall be made to Madison by IDC by general Warranty Deed subject to recorded restrictions and easements. IDC shall furnish at its cost a complete abstract of title or, at IDC's option, in lieu of the abstract, a policy of title insurance. Submission of an abstract shall not constitute a waiver of this option. The abstract or title insurance will reflect good and merchantable title to the IDC Property in IDC. [^] If objections are made to title, Seller shall have a reasonable time to meet the objections or to furnish title insurance. Taxes and special assessments due on or before the closing date shall be paid by IDC. Current general taxes and special assessments shall be prorated as of the closing date based upon the last tax statement. Rental payments shall be prorated as of the

closing date. Madison certifies that it has inspected all of the IDC Property and is not relying upon any warranties, representations or statements of IDC as to age or physical condition of improvements with regard to physical defects, which could be detected from a visual inspection of the property. The risk of loss or damage to the property by fire or other casualty occurring up to the time of transfer of title on the closing date is assumed by IDC. IDC shall vacate the property and deliver possession to Madison on the closing date. IDC shall pay for the abstract or title insurance and shall pay the real estate broker's commission due to Hathaway & Company for services rendered with respect to this sale. All other closing costs shall be paid by the parties in accordance with custom and usage for apportioning such expenses between Sellers and Buyers in like transactions in Pulaski County, Arkansas. Madison shall be responsible for only those commissions, fees, finder's fees, or other such fees contracted for by Madison with third parties and Madison shall not be responsible or obligated in any way for the commission payable to Hathaway & Company described above. The closing shall occur not

later than [^]two weeks from the date hereof. Time is of the essence.

3. Agreements Between the Banks and IDC. IDC shall pay to the Banks (a) the entire net proceeds of sale received by IDC, and (b) [^]Madison's share of the net sale proceeds of the Motel Site, as described in the preceding paragraph, if Madison elects to receive a credit against the purchase price for the IDC Property instead of receiving [^]its share of the net sale proceeds of the Motel Site. In consideration of said payments, the Banks agree to release the encumbrances which they hold on the IDC Property in a form satisfactory to Madison. It is understood and agreed, however, that the Banks will retain their encumbrances on the Timex Building and on the Cattle Barn Note. IDC agrees that it will utilize [^]its share of the net sale proceeds of the Motel Site to be received by it to renovate, repair and restore the Timex Building to good condition. IDC agrees that it will undertake to cause such renovation, repairs and restoration to take place as speedily as is reasonably possible and will immediately commence efforts to sell the Timex Building and the Cattle Barn Note (separately or together) for the best price obtainable for each such asset. IDC will not become

contractually obligated to sell either such asset without the advance written consent and approval of the Banks which consent and approval will not be unreasonably withheld. Upon sale of either or both of the Timex Building and the Cattle Barn Note, IDC will pay all expenses incident to such sale and the net proceeds of each such sale shall be shared equally by IDC and the Banks. IDC covenants (and the officer executing for IDC personally covenants) to use its and his best efforts to obtain all necessary corporate approvals and authorizations of the actions required of IDC by this Agreement. If both the Timex Building and the Cattle Barn Note have not been sold by

_____, 198__, then the Banks shall be relieved of any obligations to share the proceeds thereof with IDC and the Banks shall be free to pursue whatever remedies are available to them to realize upon such collateral security.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of August, 1985.

INDUSTRIAL DEVELOPMENT COMPANY
OF LITTLE ROCK

By: _____

MADISON GUARANTY SAVINGS AND
LOAN ASSOCIATION

By: _____

UNION NATIONAL BANK OF LITTLE
ROCK

By: _____

WORTHEN BANK & TRUST COMPANY,
N.A.

By: _____

FIRST COMMERCIAL BANK, N.A.

By: _____

AGREEMENT

This Agreement made and entered into this 13th day of September, 1985 by and between INDUSTRIAL DEVELOPMENT COMPANY OF LITTLE ROCK, an Arkansas corporation ("IDC"), MADISON FINANCIAL CORPORATION, an Arkansas state chartered savings and loan association ("Madison" which reference shall include any entity or individual to whom Madison might elect to assign its rights hereunder) and UNION NATIONAL BANK OF LITTLE ROCK, WORTHEN BANK AND TRUST COMPANY, N.A. and FIRST COMMERCIAL BANK, N.A. (all national banking associations and all hereafter collectively referred to as "the Banks").

In consideration of the mutual covenants and agreements herein contained, the parties do hereby agree, each with the other, and each intending to be legally and contractually bound, as follows:

1. Factual Matters. IDC is the owner of a substantial amount of real property all located and having a situs in Pulaski County, Arkansas. References herein to the "IDC Property" refer to all such real property owned by IDC excepting only the so called "Timex Building" more particularly described on Exhibit "1" hereto. References herein to the "Timex Building" are meant to include the land and improvements described on Exhibit 1. The Banks hold valid, perfected and enforceable encumbrances which encumber all of the IDC Property as well as the Timex Building as collateral security for obligations owed by IDC to the Banks which obligations, including interest through the 31st day of July, 1985, total \$2,259,739.
2. Agreement to Purchase and Sell. Madison agrees to purchase and IDC agrees to sell to Madison all of the IDC Property. The agreed upon purchase price is

(C) 1985

\$1,750,000.00, all of which shall be payable via certified check upon closing. The certified check will be made payable to "IDC" and "the Banks". IDC has recently contracted to sell a parcel of the IDC Property for a motel site ("Motel Site"). The property comprising the Motel Site is described on Exhibit "2" hereto. The Motel Site would otherwise have been a part of the IDC Property to be conveyed to Madison but, in view of the already contracted for sale which is anticipated to close before the closing of the purchase and sale which is the subject of this Agreement, Madison has agreed that IDC may retain 25% of the net sale proceeds received by IDC as a result of the Motel Site sale. After deducting the IDC retention of 25% of the net sale proceeds, the remaining 75% of such net sale proceeds will be delivered to Madison at the closing of this transaction or, at Madison's option, credited against the purchase price. If Madison elects to receive a credit against the purchase price, then the 75% of net sales proceeds allocated to Madison will be delivered to the Banks at closing. Conveyance shall be made to Madison by IDC by general Warranty Deed subject to recorded restrictions and easements. IDC shall furnish at its cost a complete abstract of title or, at IDC's option, in lieu of the abstract, a policy of title insurance. Submission of an abstract shall not constitute a waiver of this option. The abstract or title insurance will reflect good and merchantable title to the IDC Property in IDC subject only to recorded easements and restrictions. If objections are made to title, Seller shall have a reasonable time to meet the objections or to furnish title insurance. Taxes and special assessments due on or before the closing date shall be paid by IDC. Current general

taxes and special assessments shall be prorated as of the closing date based upon the last tax statement. Rental payments shall be prorated as of the closing date. Madison certifies that it has inspected all of the IDC Property and is not relying upon any warranties, representations or statements of IDC as to age or physical condition of improvements. The risk of loss or damage to the property by fire or other casualty occurring up to the time of transfer of title on the closing date is assumed by IDC. IDC shall vacate the property and deliver possession to Madison on the closing date. IDC shall pay for the title insurance or for bringing the abstracts up to date. All other closing costs shall be paid by the parties in accordance with custom and usage for apportioning such expenses between Sellers and Buyers in like transactions in Pulaski County, Arkansas. Madison shall be responsible for those commissions, fees, finder's fees, or other such fees contracted for by Madison with third parties. IDC shall be responsible for and shall pay the commission payable to Hathaway & Company. The closing shall occur not later than September 30, 1985. Time is of the essence.

1. Agreements Between the Banks and IDC. IDC shall pay to the Banks (a) the entire net proceeds of sale received by IDC, and (b) Madison's share of the net sale proceeds of the Motel Site, as described in the preceding paragraph, if Madison elects to receive a credit against the purchase price for the IDC Property instead of receiving its share of the net sale proceeds of the Motel Site. In consideration of said payments, the Banks agree to release the encumbrances which they hold on the IDC Property to be conveyed to Madison in a form satisfactory to Madison. It is understood and agreed, however, that the Banks will

retain their encumbrances on the Timex Building and on a certain promissory note in the face amount of \$297,500.00 made by Richardson Livestock Commission Co., Inc. and payable to IDC ("the Cattle Barn Note"). The Banks agree to loan up to and not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) to IDC for the purpose of improvements to the "Timex Building". Payment in full on proceeds drawn under this extension of credit will be due and payable two years from execution of the promissory note. Advances of proceeds under the extension of credit for specific repairs to the "Timex Building" will require prior approval of the Banks. Proceeds due IDC on the Cattle Barn Note will be applied by IDC in reduction of the \$250,000.00 extension of credit. IDC agrees that it will undertake to cause such repairs to take place as speedily as is reasonably possible and will immediately commence efforts to sell the Timex Building and the Cattle Barn Note (separately or together) for the best price obtainable for each such asset. Upon sale of the Timex Building, IDC will repay the balance owed on the \$250,000.00 extension of credit, will pay all expenses incident to such sale and the net proceeds of each such sale shall be shared equally by IDC and the Banks. If the Timex Building has not been sold by September 30, 1987, then the Banks shall be relieved of any obligations to share the proceeds thereof with IDC and IDC shall deliver to the Banks a warranty deed to the "Timex Building". The Banks will share in 50% of the ultimate proceeds of the Cattle Barn Note. IDC covenants that it has obtained all necessary corporate approvals and authorizations of the actions required of IDC by this agreement.

IN WITNESS WHEREOF the parties hereto have executed this
agreement this 13th day of September, 1985.

INDUSTRIAL DEVELOPMENT COMPANY OF
LITTLE ROCK

BY: *W. A. L. B.*

MADISON GUARANTY SAVINGS AND LOAN
ASSOCIATION

BY: *John Harris*

UNION NATIONAL BANK OF LITTLE ROCK

BY: *Robert M. Wilson B.V.P.*

WORTHEN BANK & TRUST COMPANY, N.A.

BY: *James Patrick*

FIRST COMMERCIAL BANK, N.A.

BY: *W. A. L. B. Vice President*

NEW MASTER MASTER FORM

Client ID: 9200 (3)1. Name: Missouri Savings & Loan Association (30)2. Address: 4th + Main Streets (30)Little Rock, AR 72202 (30) (30) (30)4. Alpha Sort Name: (30)
(Assigned by Accounting)5. Billing Attorney # 42 (2) 6. Billing Format # 33 (2)7. New Business Credit (Y/N) 7A. Start Date 1 1

7B. Originating Attorneys

Initials or No. Percentage

~~00000000~~

00000000

NEW MASTER MASTER FORM

8. Client ID: (8) 9. Name: (30)10. Matter # 5 (6) 11. Name: I.D.C. (30)
(Assigned by Accounting) (Must Assign Matter Name)12. Billing Address: Attention: (30)
(If not client address) (30)
 (30)
 (30)

13. Section:	<u>100</u> = Securities	14. Area of law: <u>301</u> (3)
	<u>200</u> = Tax	
	<u>X</u> <u>300</u> = Litigation	15. Billing Attorney #: <u>42</u> (2)
	<u>400</u> = Commercial	

16. Responsible Attorney # 42 (2) 17. Client reference #: (12)18. Bill Format: 33 19. Pro Bond (Y/N): X

20. Fee Basis Type:
☒ Regular (2) Rate: (A=Standard, B=Premium, C=Discount)
☐ Agreed Fee (3) \$
☐ Contingent (4)
☐ Retainer (8) \$ Period (M-Q-S-A)
☐ Rates by Attorney (9) (Explain in NOTES below)

21. NOTES:

RS 000776

Date Prepared: 8-2-85

OPTION TO PURCHASE REAL ESTATE

This option granted this 1st day of May, 1986, by SETH WARD and YVONNE ANNA WARD, his wife (collectively "Grantor"), to MADISON FINANCIAL CORPORATION ("Optionee"),

W-I-T-N-E-S-S-E-T-H:

1. GRANT OF OPTION. In consideration of Optionee's payment to the Grantor of One Thousand Dollars (\$1,000.00), and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor hereby grants to Optionee an exclusive and irrevocable Option to purchase the following described property together with all buildings and improvements thereon, situated in the City of Little Rock, Pulaski County, Arkansas, to-wit:

Part of Tracts 27 & 28, Holman Acres, Pulaski County, Arkansas.

2. PURCHASE PRICE. The purchase price for the property hereinabove described, together with all improvements thereon, shall be Four Hundred Thousand Dollars (\$400,000.00).

3. EXPIRATION DATE. This Option shall expire at 6:00 o'clock, P.M., Central Time, on August 1, 1986.

4. FAILURE TO EXERCISE OPTION. If Optionee does not exercise this Option as herein provided, all sums paid by him hereunder shall be retained by the Grantor free of all claims of Optionee, and neither party shall have any further rights of claims against the other.

5. EXERCISE OF OPTION. This option shall be exercised by Optionee's delivering to the Grantor written notice of such exercise on or before the expiration date, or any extension thereof, or by Optionee's mailing such written notice of exercise by certified mail to Grantor at least two (2) days before the expiration date, or any extension thereof; and such notice, if so mailed, shall be deemed valid and effective whether or not it actually is delivered to Grantor prior to the expiration date, or any extension thereof.

6. CLOSING REQUIREMENTS. In the event of Optionee's exercise of this Option:

a. Closing will occur within 30 days after the exercise of this Option, which date may be extended by mutual agreement;

b. The Grantor shall deliver at closing to Optionee, or his nominee, a general warranty deed conveying good and marketable title in fee simple to the aforesaid premises, free and clear of all liens, encumbrances and tenancies, except those for streets and utilities and tenancies which may be disclosed by Grantor to Optionee prior to the granting of this Option;

c. Taxes and assessments, if any, due on or before the closing date shall be paid by Grantor. Taxes and assessments, if any, for 1986 shall be prorated as of the closing date;

d. Grantor, at Grantor's sole expense, shall furnish Optionee, within 30 days after exercise of the Option, a complete abstract certified to a current date, or at Grantor's option, a commitment for an owner's title insurance policy convertible at closing to an owner's policy issued on ALTA Form B, 1970, reflecting merchantable title satisfactory to Optionee's attorney. In the event an abstract is furnished and an examination of title to said

property shall disclose that the same is not good and marketable, and if the cause of such unmarketability shall not be removed by Grantor prior to the date fixed for closing, then Grantor may exercise his option to furnish Optionee a policy of title insurance satisfactory to Optionee. If marketable title cannot be conveyed at closing, any monies paid by Optionee on account of the purchase price of said property, including any sums paid as consideration for the granting of this Option, shall be refunded to Optionee;

e. The risk of loss, damage, condemnation, or destruction of the premises or improvements thereon by fire, or otherwise, until closing shall be on Grantor;

f. Revenue stamps to be placed on the Deed shall be at the expense of Grantor.

7. PAYMENT OF PURCHASE PRICE. At closing, Optionee will pay Grantor in cash an amount equal to the purchase price set out in accordance with Paragraph 2 hereof.

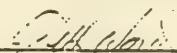
8. NOTICES. Any notices required hereunder shall be effective if given to the parties hereto at the following addresses, or such other address as either party may subsequently designate in writing:

OPTIONEE: Madison Financial Corporation
1308 South Main
Little Rock, Arkansas 72201

GRANTOR: Seth Ward
16th & Main
Little Rock, Arkansas 72201

9. ASSIGNMENT. This Option, before or after its exercise, may be assigned by Optionee without the prior written consent of Grantor.

GRANTOR:


Seth Ward

OPTIONEE:

MADISON FINANCIAL CORPORATION

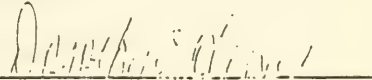
BY: 
1

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
 COUNTY OF PULASKI)

On this day before me, the undersigned officer, personally appeared SETH WARD and YVONNE ANNA WARD, his wife, known to me to be the persons whose names are subscribed to the foregoing Option to Purchase Real Estate, and acknowledged that they had executed the same for the purposes therein contained.

WITNESS my hand and official seal this 5th day of
May, 1986.


 Notary Public
 Dorothy E. Olinger

My Commission Expires:

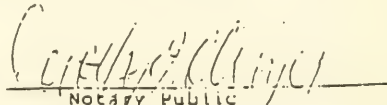
August 26, 1993

ACKNOWLEDGMENT

--STATE OF ARKANSAS)
) ss.
 COUNTY OF PULASKI)

On this day before me, the undersigned officer, personally appeared John Latham, Secretary Madison Financial, known to me to be the person whose name is subscribed to the foregoing Option to Purchase Real Estate, and acknowledged that he had executed the same for the purposes therein contained.

WITNESS my hand and official seal this 5th day of
May, 1986.


 Notary Public
 Dorothy E. Olinger

My Commission Expires:

August 26, 1993

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, FEBRUARY 1, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Ms. Strayhorn, thank you for coming in today. If you would like to make a statement, we would be very happy to receive it.

Would you stand for the purposes of taking the oath.

SWORN TESTIMONY OF SUSAN STRAYHORN FORMER SECRETARY MADISON FINANCIAL CORPORATION

Ms. STRAYHORN. I decline a statement at this time, thank you. Senator SARBANES. Pardon?

The CHAIRMAN. She has no statement.

Senator SARBANES. Ms. Strayhorn, I think if you pull that microphone closer to you, we will be able to hear you better. That's a little better, thank you.

The CHAIRMAN. Ms. Strayhorn, Mr. Chertoff is our Counsel and he will initially be asking you some questions.

Ms. STRAYHORN. Good morning.

Mr. CHERTOFF. Good morning and thank you for coming. Ms. Strayhorn, in 1985, you went to work for Jim McDougal; correct?

Ms. STRAYHORN. As a matter of fact, 11 years ago this month, yes.

Mr. CHERTOFF. What was your job with Mr. McDougal?

Ms. STRAYHORN. Secretary.

Mr. CHERTOFF. How long did you work with Mr. McDougal?

Ms. STRAYHORN. Approximately 1½ years.

Mr. CHERTOFF. When you first came to work for him, where was his office?

Ms. STRAYHORN. It was in the Madison Guaranty Savings & Loan building, a half flight above the lobby.

Mr. CHERTOFF. Was there a time that he moved his office?

Ms. STRAYHORN. Temporarily.

Mr. CHERTOFF. Was that in February 1986?

Ms. STRAYHORN. Sometime around then, yes, sir.

Mr. CHERTOFF. Where did he move it?

Ms. STRAYHORN. He moved to the sales office at Castle Grande.

Mr. CHERTOFF. Where was that located? There's a little map off to your right, it shows 145th Street. Was the trailer off 145th Street?

Ms. STRAYHORN. Yes, sir, just east of number 4 parcel.

Mr. CHERTOFF. What was Mr. McDougal's reason for relocating his office in February 1986?

Ms. STRAYHORN. Madison Guaranty didn't have a lot of room and office space to accommodate a number of examiners. His office was large and had a conference table. He was willing to do that to make room for the examiners.

Mr. CHERTOFF. Was part of the problem also that he really didn't want to be around too much in case the examiners had questions?

Ms. STRAYHORN. No, I don't think he had any objection to answering questions. The objection was answering them one at a time. I think he had rather they accumulate their questions and pose them at one time.

Mr. CHERTOFF. He didn't want to be at the office so that they could come to him with questions as they came up; he wanted them to be collected and then at the end he would answer them?

Ms. STRAYHORN. I don't know if that was a big concern, no.

Mr. CHERTOFF. Do you remember seeing Governor Clinton at the Castle Grande trailer?

Ms. STRAYHORN. Only on one occasion, yes.

Mr. CHERTOFF. That was after you went out to the trailer to be in the office along with Mr. McDougal; correct?

Ms. STRAYHORN. Yes, that's true.

Mr. CHERTOFF. Tell us about that visit by Governor Clinton.

Ms. STRAYHORN. There's not a whole lot to tell. My husband just reminded me last night that the Governor and some members of his staff visited some industrial plants in Sheridan, one of which my husband was employed at the time, and as a matter of fact he stopped by on the way back to Little Rock for a short visit.

Mr. CHERTOFF. Well, tell us about the visit.

Ms. STRAYHORN. I don't know if there's a lot to tell. I was busy. You know, they were only interested in the commercial development, it appeared.

Mr. CHERTOFF. When you say "interested in the commercial development," Governor Clinton came into the trailer?

Ms. STRAYHORN. I believe he came in for a short time. As I say, I was busy, I was answering the phone and pretty much doing other duties, so it was no really big affair.

Mr. CHERTOFF. Did the Governor introduce himself to you?

Ms. STRAYHORN. Not on that occasion, no.

Mr. CHERTOFF. Did Mr. McDougal leave with the Governor?

Ms. STRAYHORN. I think they may have gone to lunch, yes.

Mr. CHERTOFF. Did Mr. McDougal tell you afterward that he had given Mr. Clinton a tour of some of the property there?

Ms. STRAYHORN. I don't think he ever really told me specifically. I probably made that assumption that he was looking at some of the industrial sites. It was a nice development and, you know, something that could improve Little Rock.

Mr. CHERTOFF. What kind of development was it?

Ms. STRAYHORN. Well, actually it started out to be a fairly heavy development—Levi Strauss, and the Siemens Allis plant were already there, and it looked like it had a lot of potential.

Mr. CHERTOFF. They were also going to put up like a mobile home area or a home development in the area?

Ms. STRAYHORN. Yes, sir, that was separate from the commercial development.

Mr. CHERTOFF. Did Mr. McDougal mention to you about giving Governor Clinton a tour?

Ms. STRAYHORN. I don't recall. I may have made that assumption on my own, because it would have been beneficial to Little Rock and Arkansas.

Mr. CHERTOFF. Well, Ms. Strayhorn, let me make sure someone gives you a copy of your interview that you had with the RTC in April 1994. I think you may have it but maybe someone can go down and help the witness find page 47.

Ms. STRAYHORN. Would it be in this portfolio?

Mr. CHERTOFF. It might be, but we'll give you some help. Do you remember being questioned or interviewed by some investigators a couple of years ago from the RTC, from some Government agency involving banks?

Ms. STRAYHORN. I have been interviewed so many times I have lost count.

Mr. CHERTOFF. I'm sure that's true. They recorded the conversation. I think they must have told you that, and you stated:

Bill Clinton, the only other time I remember seeing him was—or even talking to him on the telephone, I mean, he just—he didn't call a lot, but—but was out at the Castle Grande sales office.

I gather that's the office, the trailer you're talking about that Mr. McDougal was in?

Ms. STRAYHORN. Yes, sir, I believe that's what I was referring to.

Mr. CHERTOFF. Then you stated:

He dropped in and, as I recall, I think they went up the street to the Little Plate lunch place and had lunch, and Jim said something about giving him a tour. I assumed it was a commercial property because I think at the time there was a steel mill or steel firm was looking to come in and they were looking at the property out there, so I think he might have been interested in the industrial part of it, but that was kind of a non-event thing too, you know.

What I'm interested in here, and since this is your statement to the investigators a couple of years ago, I understand you were assuming it was a commercial property, but your statement to the investigators was that Jim said something about giving him a tour. I take it you stand by what you said to the investigators?

Ms. STRAYHORN. It's just very possible, my recollection a few years earlier probably was better than it is today.

Mr. CHERTOFF. Do you remember a Lisa Raglin?

Ms. STRAYHORN. Yes, the name is familiar but I'm—I can't quite put her in a capacity.

Mr. CHERTOFF. Did she work at the savings and loan?

Ms. STRAYHORN. Lisa Raglin.

Mr. CHERTOFF. Did she work with computers at the savings and loan?

Ms. STRAYHORN. You know, I'm sorry, my mind is at a blank. I'm sure she worked there but I can't recall exactly in what capacity.

Mr. CHERTOFF. Were you involved in supervising her at all? Does that ring a bell?

Ms. STRAYHORN. I don't think—well, I can't remember right now. I'm just a blank. I haven't heard that name in quite some time.

Mr. CHERTOFF. OK. She was also interviewed as part of one of these investigations. She worked as a computer loan processor at the savings and loan during the period from late 1984 into 1986. I want to read you a portion of her statement, which I think you have before you. It's page 3 of her statement, Senate 22348. This refers back before Mr. McDougal moved to the trailer, so it's while they were still in the building. Let me send someone down to help you find the page. It's page 3.

Senator SARBANES. Is this Ms. Strayhorn's testimony?

Mr. CHERTOFF. No, this is Ms. Raglin's statement.

I'm going to ask her a question about it and I'm going to direct her attention to it. I think we'll send someone down to sit with her and help her find this stuff.

Mr. BEN-VENISTE. Did you say testimony?

Mr. CHERTOFF. No, it's a statement of interview by—

Ms. STRAYHORN. Lisa Raglin?

Mr. CHERTOFF. That's correct. A statement of interview, memorandum of interview. It's also accompanied by a typewritten version of notes from the interview, and I'm going to read from the third page of the memorandum of interview. The institution—

Senator SARBANES. Michael, who is this interview with?

Mr. CHERTOFF. Lisa Raglin, who worked at Madison Guaranty Savings & Loan.

Senator SARBANES. No, who did the interview?

Mr. CHERTOFF. Pillsbury Madison & Sutro. It states:

The institution had many fundraisers in the lobby. To her knowledge, many of these fundraisers were for the campaign contributions to Bill Clinton. Raglin remembered that Clinton came by on a regular basis, sometimes in jogging attire or business suit but on a regular monthly routine.

Now do you have a similar recollection?

Ms. STRAYHORN. I don't know about her recollection, but I would not agree with—that was not my perception, no.

Mr. CHERTOFF. That was not your perception?

Ms. STRAYHORN. No.

Mr. CHERTOFF. Do you remember there being fundraisers?

Ms. STRAYHORN. I only knew of one. It was kind of a small affair. In fact, I believe it was shortly after I came to work for Madison.

Mr. CHERTOFF. That would have been in the early spring of 1985?

Ms. STRAYHORN. I don't recall exactly the date, but it was early on in my employment, yes.

Mr. CHERTOFF. Where was that held?

Ms. STRAYHORN. In the lobby of the Madison Guaranty Savings & Loan.

Mr. CHERTOFF. Was Mr. Clinton there?

Ms. STRAYHORN. I don't remember his being there. I assume he probably was but I don't remember seeing him.

Mr. CHERTOFF. When you were at the savings and loan, did you ever hear anything about Whitewater Development Corporation?

Ms. STRAYHORN. Of course.

Mr. CHERTOFF. Who did you hear it from?

Ms. STRAYHORN. Mr. McDougal.

Mr. CHERTOFF. What did he—I'm sorry, go ahead.

Ms. STRAYHORN. It was listed on his financial statements.

Mr. CHERTOFF. Mr. McDougal's financial statements?

Ms. STRAYHORN. Pardon me?

Mr. CHERTOFF. On whose financial statements was it listed?

Ms. STRAYHORN. Mr. McDougal's.

Mr. CHERTOFF. What kind of financial statements?

Ms. STRAYHORN. A regular financial statement that I prepared.

Mr. CHERTOFF. What, if anything, did you hear or learn about Whitewater Development when you were at the savings and loan?

Ms. STRAYHORN. Not a whole lot. As far as I could see, it was pretty much a dead issue, and did not receive a lot of attention as far as I could tell. Mr. McDougal was busy with the Financial Corporation's development and I was aware of the Whitewater Development but it just didn't appear to be a real vibrant going thing. It was a put-back-in-the-mothballs issue at that point.

Mr. CHERTOFF. What is it that you heard about it? Did you know that the Clinton's were partners in it?

Ms. STRAYHORN. I knew that at some time, but I can't recall when exactly I knew they were partners.

Mr. CHERTOFF. Do you know how you found out?

Ms. STRAYHORN. After I researched some delinquent tax bills from Marion County, I figured that they were partners prior to that.

Mr. CHERTOFF. When did you research those delinquent tax bills?

Ms. STRAYHORN. Well, like I say, I don't think that development had been given a lot of attention, and I had to research to see—some of those lots apparently were sold on purchase agreements, and the taxes had become default and Susan asked me to attempt to get the billings on those so that she could resolve that issue.

Mr. CHERTOFF. That was Susan McDougal?

Ms. STRAYHORN. Right.

Mr. CHERTOFF. Did she tell you that Mrs. Clinton was complaining about this issue of the taxes being paid?

Ms. STRAYHORN. No, I don't recall that she mentioned that.

Mr. CHERTOFF. Did you get the impression in any other way from anybody, including perhaps Mrs. Clinton herself, that Mrs. Clinton was concerned about the way taxes were being paid or other payments were being made with respect to this Whitewater project?

Ms. STRAYHORN. I'm not sure Mrs. Clinton was even aware.

Mr. CHERTOFF. I'm asking you, did you become aware from any source that there was a concern on the part of Mrs. Clinton about the way these taxes were being paid or not being paid?

Ms. STRAYHORN. Right now, I don't remember.

Mr. CHERTOFF. Did Mr. McDougal mention it to you?

Ms. STRAYHORN. I just don't remember. It's possible, and I'm sure you've probably got a document typed or something to that effect. I don't remember, it was not a significant issue.

Mr. CHERTOFF. Ms. Strayhorn, you remember a time in the fall of 1985 when the financial corporation was involved in the purchase of property from the Industrial Development Company?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. Do you remember that the actual purchase was done by having part of the property purchased in the name of Seth Ward and part of the property purchased in the name of Madison Financial?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. You understood the reason for that was in order to circumvent or get around the 6 percent investment limitation that applied to Madison Financial?

Ms. STRAYHORN. Counselor, I was involved in the investigation, I'm not sure what I knew at that time or the knowledge that was acquired after the investigation. I have a little problem distinguishing when I knew what. I was aware that there was a purchase, I was aware that Mr. Ward was holding some of the property, but there were also other people that had purchased the property.

Mr. CHERTOFF. Mr. Ward was holding the property on behalf of Madison Financial, and McDougal?

Ms. STRAYHORN. I cannot say personally that he was holding it on behalf of Madison Financial. I don't know that anybody told me directly that that's what it was, but, you know, I can—

Mr. CHERTOFF. It's a pretty good assumption, you came to realize that?

Ms. STRAYHORN. Well, from documents I did and various pieces of information, I more or less came to my own assumptions. I don't know if anybody ever really told me. I can't remember at this time. I mean, that was 11 years ago.

Mr. CHERTOFF. Ms. Strayhorn, you also came to understand at some point, and I understand that you were here as a secretary, you were not someone who was a mover and a shaker at the bank, but you understood that after the property was acquired, they started to sell it off pretty quickly; right?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. You understood that the way in which they sold it off was they gave loans to the purchaser so that in effect it was kind of a shell game?

Ms. STRAYHORN. I have difficulty with the terminology. I think all this was documented. I think I even produced a paper trail for the Justice Department in the previous indictment against Mr. McDougal and others. I mean, it was an extensive investigation and we reviewed all the transactions, and I produced documents under a subpoena to—

Mr. CHERTOFF. Ms. Strayhorn, again, I'm going to ask you if we can show you page 120 of your recorded interview with the RTC, and I understand you've been through this before, but this is a different investigation and we're looking at different things. It states:

Question: And did you get the feeling from looking at that stuff that all the money was being moved around among accounts at Madison?

Answer: In some cases, yes. Some of the funds went to pay off loans and then other loans were made.

Question: It looked like a shell game. Not to interrupt, but did it look like a shell game?

Answer: Yeah, what I understand a shell game to be. Particularly the Seth Ward loans.

Question: Right, because Fulbright's sale closed and then Castle Water and Sewer closed and that paid off the Ward loan and then they had to get another project done to pay off those loans and it seemed it would be building on itself; right?

Answer: And the one piece of property that Seth Ward ended up with, I mean, he ended up with a piece of property free and clear, and we took—after the Seth Ward trial, I did go and record the deed to the property behind the—[and it's blank] that I think it was 28 acres or something, he deeded that back because it was collateral on a \$400,000 loan plus it was collateral on a \$70,000 loan plus then he had the unsecured \$90,000 loan that he really was liable on. I think they deducted that from the judgment. But that was the worst-case scenario that I've ever seen. In fact, I had to do a schedule so that I could keep up with it, and there was the airplane loan that was real fun to investigate, too. And I think the airplane actually came from Chris Wade to start with.

Do you remember all this?

Ms. STRAYHORN. Yes, and I believe we produced documents. We could be bogged down here for weeks rehearsing all the transactions. I didn't make any assumptions as to whether they were wrong or that, but yes, I did.

Mr. CHERTOFF. You stand by your statement, I take it, a couple of years ago to the investigators that yeah, what I understand a shell game to be, particularly the Seth Ward loans? You said that. It was recorded.

Ms. STRAYHORN. Well, yes, a shell game I think is used loosely, but I don't even know what a shell game is, particularly.

Mr. CHERTOFF. It's a pyramid scheme, a Ponzi scheme. It's when you take the pea and you put it under the shells and you move it around so quickly that the sucker doesn't know where the pea is. That's what a shell game is.

Ms. STRAYHORN. I think the documents speak for themselves.

Mr. CHERTOFF. Now that gets us to the issue of the documents, so let me turn to some of those. You, in fact, became involved testifying as a witness at a trial involving Seth Ward and a dispute he had with Madison Financial, right, or Madison Guaranty; correct?

Ms. STRAYHORN. I'm not sure who was named in the suit but it was directed toward Madison, yes.

Mr. CHERTOFF. It was called *Ward v. Madison*; right?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. It had to do with Ward's claiming commissions for his participation or his interest in the sale of some of these properties; right?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. An issue came up concerning an option agreement. Do you remember that?

Ms. STRAYHORN. Yes, sir.

Mr. CHERTOFF. You testified in the trial?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. Were you actually shown the option agreement?

Ms. STRAYHORN. Do you not have the transcript of the trial?

Mr. CHERTOFF. Well, I have a transcript of the trial. I'm trying to ask you whether at any point before the trial when you were preparing for the trial, when you were being interviewed, when you were meeting with lawyers, did anybody ever show you a copy of the option agreement?

Ms. STRAYHORN. I don't recall. You know, I have looked at this thing hundreds of times, and you know, I stand by my testimony, whatever it was at that point.

Mr. CHERTOFF. Well, I'm not asking you about something you testified about. I'm asking you whether you ever were shown this option agreement.

Ms. STRAYHORN. I have seen it. I don't know when I have seen it, but yes, I have seen it.

Mr. CHERTOFF. Did you see it in connection with the 1987 or 1988 handling of this case, *Ward v. Madison*?

Ms. STRAYHORN. That's very possible. I don't have any documents to refer to that effect, but—

Mr. CHERTOFF. Let me start by showing you documents we are going to put up on the screen. One is marked SW1-008 and one is SW1-005. They also bear markings, Plaintiff's Exhibit 5 and Plaintiff's Exhibit 4. I believe these were two documents that you were shown and you did testify about in the trial.

I also want to make sure you have a copy of your trial testimony, and before we get into these documents I want to refer you to pages 196 and 197 of your trial testimony, and Jennifer will get it for you in a second, where you testified about the time that Mr. McDougal changed his offices. Do you have that trial testimony? We'll get it for you right now. Page 196 and 197, at line 21, in your testimony at the trial, you were asked:

Question: Where did he go?

Answer: He vacated the offices at the savings and loan building and moved to a sales office at the Castle Grande estates. There was a sales office for the financial corporation that was established there, and he moved his office there.

Question: Do you know why he moved?

Answer: Yes.

Question: Why?

Answer: He did not want to be accessible to the examiners to have to answer any questions at that time.

Do you remember giving that testimony in response to those questions?

Ms. STRAYHORN. I can't deny the fact that it's a record, but—

Mr. CHERTOFF. OK. Let me show you Plaintiff's Exhibit 5. You were shown this in the trial, too. You recognize this document, the typewritten portion of the document, not the part where it's written "void" across the top in handwriting. Do you recognize the typed portion of the document?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. You typed this; correct?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. You typed it at Mr. McDougal's direction?

Ms. STRAYHORN. I believe it would be at Seth Ward's direction.

Mr. CHERTOFF. At Seth Ward's direction?

Ms. STRAYHORN. According to the typist symbol, yes.

Mr. CHERTOFF. SW is Seth Ward and SS is your initials?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. Did you write the words "void" across the top?

Ms. STRAYHORN. It doesn't look—it doesn't look like my—

Mr. CHERTOFF. In fact, isn't it the case that you had not seen that this document is an agreement between Mr. Ward and Mr. McDougal that appears to set forth their arrangement with respect

to the purchase of this property. Am I correct that when you typed this, you believed that this was the agreement and it is signed—that governed the arrangement between Ward and McDougal with respect to what Ward did on this property?

Ms. STRAYHORN. I'm sorry, I'm not following your direction.

Mr. CHERTOFF. You understood—when you typed this letter, you believed that this was, in fact, the final agreement that had been entered into between Ward and McDougal regarding the purchase of the property; right?

Ms. STRAYHORN. Tell you the truth, I typed it. I don't know if I ever had a belief of anything. It wasn't my prerogative to believe or disbelieve. I mean, the document stands by itself.

Mr. CHERTOFF. When is the first time you saw that this document had "void" written across it?

Ms. STRAYHORN. I don't know. I think it may have been presented at trial.

Mr. CHERTOFF. I'll help you, on page 195 of your testimony, line 14, states:

Question: Had you ever seen this document with void written on it before Mr. Ward brought this lawsuit?

Answer: No, I had not.

So you would agree with me that between September 24, 1985, or thereabouts when this document was typed by you and a couple of years later when this lawsuit was dropped—was brought, rather, you did not—you had not seen that this agreement, this initial agreement, had been voided; correct?

Ms. STRAYHORN. I stand by my testimony, Counselor.

I'm at a disadvantage here because I have not reviewed these documents for some time. I've been deposed, interrogated. I've testified in so many trials, both defensive and offensive, and I would prefer that we not get bogged down in details, because I just plain don't remember. They were minor details as far as I was concerned.

Mr. CHERTOFF. Plaintiff's Exhibit 4 is a document you did not type; right? You were shown this at the trial, too?

Ms. STRAYHORN. Like I say, Counselor, I stand by my testimony.

Mr. CHERTOFF. Would you agree with me that this is not a document you typed; right?

Ms. STRAYHORN. Since it doesn't have my typist signature on it and in some cases I may have left it off, but for some reason, but at the time I don't believe that I thought I had done it.

Mr. CHERTOFF. Again, just to put your mind at ease, that's what you testified about at page 194, line 22:

Question: I have placed in front of you Plaintiff's Exhibit 4, which is a September 24, 1985 letter. Did you prepare this letter?

Answer: No, I did not.

We have someone who has accepted or at least indicated some responsibility for the letter. We have an Official Record of Interview from the Office of the Inspector General with a Martha Patton, former secretary to Webster Hubbell, which I would like to put up to close this part of the examination. At page 2, the report discloses the following and we can put it up on the Elmo.

Ms. Patton was shown a copy of a letter dated September 24, 1985, from Seth Ward to James McDougal, President, Madison Financial Corporation. [See Attachment 2] The letter is not on Rose letterhead. Rather, it has Mr. Ward's name and address at the top. Ms. Patton stated that she could not recall typing this specific

letter either but that she believed she did, because the type is similar to the IBM typewriter and the second page is formatted in the style she used while a Rose secretary. She further stated that both letters appear to be her style of typing.

When my time resumes we'll continue with what happened with respect to this letter, the property, and how it related to the option. The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Good morning, Ms. Strayhorn.

You've testified a number of times, and I just wanted to try to ascertain that here this morning. I take it you testified at the trial of Mr. McDougal; is that correct?

Ms. STRAYHORN. Yes, sir.

Senator SARBANES. That testimony was quite extensive, as I understand it. In fact, we have it here. It's a public record, so your previous testimony is available to the Committee and anyone else who wants to look at it. You also testified at this civil trial involving Mr. Ward and Madison that Mr. Chertoff has been asking you about; is that correct?

Ms. STRAYHORN. Yes, sir.

Senator SARBANES. I will note we have testimony available and of course that's generally available as well. I take it you were interviewed at some length by the Pillsbury Madison firm who was doing an investigation for the RTC. Do you recall that?

Ms. STRAYHORN. Is that the young fellas from Los Angeles?

Senator SARBANES. Yes. I'm told that that's correct.

Ms. STRAYHORN. I did meet with—were they retained by the RTC, I believe?

Senator SARBANES. As I understand it that was a lengthy interview as well, was it not?

Ms. STRAYHORN. Well, my daughter and daughter-in-law were out looking for me that night, so yes, I think it was.

Senator SARBANES. I will make note of the fact that we have that testimony and it's generally available to the Committee, and to the public and to the press, as a matter of fact.

You also did an interview of some type with the Inspector General of the RTC. Do you recall that?

Ms. STRAYHORN. Yes, I believe we met at our offices, as a matter of fact, and I'm not sure what date, yes.

Senator SARBANES. Let me just read this into the record. This is from the Office of the Inspector General of the Resolution Trust Corporation, saying that Sue Strayhorn, former secretary, Madison Financial Corporation, a subsidiary of Madison Guaranty Savings & Loan, was interviewed by RTC OIG, Assistant Regional Inspector General for Investigation, Phillip Spray, and FTC OIG Special Agent Joe Chappel at the U.S. Department of Agriculture's OIG office in Little Rock on April 5, 1994. On April 7, 1994, Strayhorn signed an affidavit memorializing the April 5, 1994 interview. Do you recall that?

Ms. STRAYHORN. Senator, I'm at a loss here because it seems like you have all the information. You know, I can tell you from this point—how much time do you have? It took us like 5 years, and if you want to just skim the surface we can make it 3 years, but I'm sorry, I stand by my testimony and—

Senator SARBANES. I'm not trying to inquire into the substance of your testimony. I'm just trying to establish on the record that you've testified in a lot of places, to a lot of different people, and that testimony is generally available, both to this Committee, and to the public. In a sense, given that it's so publicly available, it seems to me that we have the substance of what you have to tell us in all of these—

Ms. STRAYHORN. That's what I'm saying, yes.

Senator SARBANES. In all these previous appearances, or previous testimonies. Now, you recall giving this one as well, I take it.

Ms. STRAYHORN. I believe that's one I may have even been allowed to edit and may have even signed. Is that the one?

Senator SARBANES. That's the one that you did an affidavit on, and I assume they probably showed it to you and you were able to edit it and correct it?

Ms. STRAYHORN. Yes, I was, as a matter of fact.

Senator SARBANES. Have you had any conversations or interviews with this Committee or the staff of this Committee?

Ms. STRAYHORN. I talked to Ms. Fisher, just in general terms—about arrangements and scheduling. I did speak with Mr. D'Amato earlier today. I don't want to lie on record.

Senator SARBANES. About the substance of matters or just about appearing?

Ms. STRAYHORN. I don't know how you would classify that. Maybe, Mr. D'Amato can clarify that.

The CHAIRMAN. Ms. Strayhorn indicated to me that she believes she'll be a witness in another trial, and she was concerned about testimony today, whether that would bring further inquiries. Her schedule has been disrupted and this has been somewhat of an ordeal. We talked for 2 or 3 minutes and I assured her we would attempt to accommodate her as best as possible and that all she had to do was answer the questions to the best of her ability and that was the nature of her comments to me. In an effort to accommodate her, I believe one of our staffers, in setting up and making arrangements, agreed that she would be able to come and give a deposition and then testimony. That was what Ms. Fisher did in attempting to facilitate and meet with Ms. Strayhorn's problems.

Ms. STRAYHORN. Correct.

Senator SARBANES. Well, now, I didn't understand.

Ms. Fisher interviewed you; is that correct?

The CHAIRMAN. No, she did not. Ms. Fisher attempted to schedule the witness at a time that would accommodate, as we do with all. It was simply a call for the purposes of setting up a schedule so Ms. Strayhorn could be here. In addition, it was agreed, in order to help Ms. Strayhorn, that there would not be a deposition because that might take her coming down an additional time. She felt relieved about that, that she would only have to be examined once as opposed to coming in and having a deposition and then coming back and testifying. That was the nature of the contact.

Senator SARBANES. With Ms. Fisher?

The CHAIRMAN. A telephone conversation, which we do, Senator, with all of the witnesses either through them directly or through their counsel when they have attorneys.

Senator SARBANES. Well, that's a helpful explanation. Your concern this morning, Ms. Strayhorn, that you're to testify and you anticipate testifying in some trial; is that correct?

Ms. STRAYHORN. I don't anticipate, Senator. I've been subpoenaed by the Special Counsel.

The CHAIRMAN. She wanted to advise me of that.

Ms. STRAYHORN. Unless I want to get arrested and I don't think that would look real good.

Senator SARBANES. All right. Are there other testimony or interviews besides these that would be available that would—where you had spelled out, you know, your recollection of the substance of matters that you can recall?

Ms. STRAYHORN. Senator, I have been interviewed, deposed, testified in court so many times, I've never been able to attend a trial. I think all of the facts on this issue is well-documented, particularly in the RTC records.

I personally have documented most of this information. You know, we're going to be here for weeks if we get bogged down in the minor details. I stand by my testimony.

Anything out of that area, I will be glad to help you with.

Senator SARBANES. Now, I understand that, and I think that's an important point. I'm just trying to find out whether there's other testimony besides the ones that we've already discussed that you recall giving. We've had the two trials, the testimony, the interview with the RTC Inspector General where you edited it and signed it, and then we have the lengthy interview you had with the RTC people that, as you indicated, involved a lawyer from Los Angeles. Have there been other instances of interviews or testimony that you can recall?

Ms. STRAYHORN. I've spoken with the counsel on some occasions, and I didn't log all of these. I thought maybe, you know, after this, and if I had known it was going to be so extensive I probably should have kept a log. No, sir, I don't recall.

I have had several interviews with the Special Counsel, yes.

Senator SARBANES. With the Independent Counsel, with Mr. Starr's office and his people?

Ms. STRAYHORN. Yes.

Senator SARBANES. Thank you very much.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Ms. Strayhorn. My name is Richard Ben-Veniste. We have not spoken or met before.

Ms. STRAYHORN. No, sir.

Mr. BEN-VENISTE. I'll try to be very brief today hopefully. Let me make sure of one fact, however, and that is with respect to the time that Mr. McDougal moved out to the trailer office, you're quite clear that that was sometime on or after February 1986?

Ms. STRAYHORN. It was in that general timespan, yes.

Mr. BEN-VENISTE. We are told on the basis of the testimony of the auditors that came in to audit the Madison Guaranty Savings & Loan that they were in from February through July, and Mr. McDougal was out there during that period of time, and I take it continuously thereafter in terms of his principal place of business?

Ms. STRAYHORN. He left in July 1986.

Mr. BEN-VENISTE. He left the savings and loan?

Ms. STRAYHORN. Yes, sir.

Mr. BEN-VENISTE. That was at the invitation of the Federal authorities by way of a cease and desist?

Ms. STRAYHORN. I think he may have been given an opportunity.

Mr. BEN-VENISTE. He knew what was coming and they allowed him the opportunity to resign essentially?

Ms. STRAYHORN. We never discussed it, but yes, I think so.

Mr. BEN-VENISTE. You got that impression?

Ms. STRAYHORN. Yes.

Mr. BEN-VENISTE. So that the time that you recall when Governor Clinton visited with Mr. McDougal in the trailer office was clearly sometime after February 1986. That's very clear?

Ms. STRAYHORN. Yes, it would have had to have been in that time period. I'm not sure exactly.

Mr. BEN-VENISTE. Do you have any way of further pinpointing when that visit might have occurred?

Ms. STRAYHORN. No, sir, that was a very busy summer. There were a lot of things that had to be handled. It was very insignificant. I don't have, you know, anything to attach it to a particular point in time.

Mr. BEN-VENISTE. You mentioned it——

Ms. STRAYHORN. I mean, it was not a significant visit as far as I could tell, and only on two occasions did I ever even know that he came into the office.

Mr. BEN-VENISTE. Do you recall other occasions when there was contact between Mr. McDougal and Governor Clinton?

Ms. STRAYHORN. Everybody seems to think they were bosom buddies. I did not see that at all.

Mr. BEN-VENISTE. Well, we want to get your testimony and your recollection, Ms. Strayhorn.

Ms. STRAYHORN. My perception is that they were political friends. I don't think they visited on a regular basis. As far as I could tell, at least not in the office situation.

Mr. BEN-VENISTE. OK. You mentioned it was a particularly busy or hectic summer.

Ms. STRAYHORN. Yes, sir.

Mr. BEN-VENISTE. Does that lead you to believe that it was closer to summer than to February when Governor Clinton visited?

Ms. STRAYHORN. No, I just referred to it because it got rather warm in that area during that period, but I don't have any point of reference to establish a date that that was. My husband may remember when he visited his plant, but he reminded me last night that it was on that same day.

Mr. BEN-VENISTE. It was on the same day?

Ms. STRAYHORN. Yes.

Mr. BEN-VENISTE. Do you want to take a minute to chat with your husband?

Ms. STRAYHORN. I don't think he's going to be able to remember either because it was rather insignificant.

Mr. BEN-VENISTE. This would be in the nature of new information, and certainly put new light on the subject.

Ms. STRAYHORN. He hasn't been subpoenaed yet, so——

Mr. BEN-VENISTE. From the fact that you raise this point, was Governor Clinton in the habit of dropping in as he toured through

the State and particularly the area around Little Rock where the seat of State government was located?

Ms. STRAYHORN. I'm only aware of this one instance, of which I was reminded by my husband last evening, yes.

Mr. BEN-VENISTE. At least it's fair to say that you don't remember it having been just at the time that Mr. McDougal moved out to the trailer, because that would have probably stood out in your mind that here Mr. McDougal just got there and all of a sudden the Governor dropped in?

Ms. STRAYHORN. Well, I didn't join him in the sales office until a couple or three weeks later, so it wasn't instantly.

Mr. BEN-VENISTE. It could have been in the spring or summer, it didn't stand out in your mind?

Ms. STRAYHORN. I don't recall cold weather, but then in Arkansas we have warm days in March. I don't have any reference point. I just don't, I'm sorry.

Mr. BEN-VENISTE. Fair enough. I'm just trying to get the best recollection you can provide us, not being critical.

Ms. STRAYHORN. I have trouble remembering the important points. That just was not a significant event in my book.

Mr. BEN-VENISTE. Let me ask you about the relationship between Mr. McDougal and Mr. Hale. Have you met David Hale?

Ms. STRAYHORN. I'm sure you're going to have some document that says I did, but I don't recall ever meeting the man.

Mr. BEN-VENISTE. I'm not suggesting you did.

Ms. STRAYHORN. You don't have a document there saying I do?

Mr. BEN-VENISTE. I'm not trying to trip you up Ms. Strayhorn.

Ms. STRAYHORN. Right now, I don't recall ever meeting him, no. I did deal with him on other matters, but—

Mr. BEN-VENISTE. Were you aware of the fact that Mr. McDougal and Mr. Hale had a business relationship?

Ms. STRAYHORN. I came to perceive that they were initiating a business relationship, yes.

Mr. BEN-VENISTE. You testified that you became a person who was extremely helpful to the U.S. Attorney's office in terms of the paper trail, as you mentioned, and authenticating documents and doing your best to provide truthful testimony as requested by the U.S. Attorney's office in Little Rock in preparation for the criminal trial of Mr. McDougal back in 1989. Is that fair to say?

Ms. STRAYHORN. I'm not sure how helpful I was. I was about the only one left that had any knowledge at all.

Mr. BEN-VENISTE. You were trying to do your best, is my point.

Ms. STRAYHORN. I was, yes.

Mr. BEN-VENISTE. Obviously the events were a lot fresher in your mind back in 1989 than they are now, 7 years later?

Ms. STRAYHORN. Well, I have to point out too, these matters are just one in many that were extensively investigated, in most cases litigated. Some ended up in bankruptcy, so I was dealing with—during the RTC period under which I worked for the RTC, period, there were so many matters that didn't give me time to reflect on a lot of issues.

Mr. BEN-VENISTE. Let me ask you about David Hale to see if you have a recollection about the Dardenelle development matter.

Ms. STRAYHORN. Yes, I was involved in that.

Mr. BEN-VENISTE. Will you tell us what you recall about that matter?

Ms. STRAYHORN. The deposition?

Mr. BEN-VENISTE. In terms of Mr. Hale's role, Mr. McDougal's role and the role of individuals who Mr. Hale may have encouraged to put up property as security for a loan.

Ms. STRAYHORN. I'm sorry, can you rephrase that question?

Mr. BEN-VENISTE. What do you recall about what that investment was all about?

Ms. STRAYHORN. The Dardenelle development?

Mr. BEN-VENISTE. Yes.

Ms. STRAYHORN. From my recollection, it was a family farm, and I think it was like 200 and something acres. The family of his secretary—

Mr. BEN-VENISTE. Of Mr. Hale's secretary?

Ms. STRAYHORN. Yes. I think it was in danger of being foreclosed and his secretary had asked him to help her out to keep it from being foreclosed and sold at a foreclosure sale.

This is purely from memory. I think all of this may be stated in the complaint that was filed in the cross complaint and the counter complaint by the Crooms family.

Mr. BEN-VENISTE. Who is the Crooms family.

Ms. STRAYHORN. They were the elders of Karen Crooms.

Mr. BEN-VENISTE. Karen Crooms was a secretary to Mr. Hale?

Ms. STRAYHORN. I say secretary in general terms. I'm not sure of her capacity.

Mr. BEN-VENISTE. May she have been administrative assistant or in that capacity?

Ms. STRAYHORN. She was associated with his office, yes.

Mr. BEN-VENISTE. Somehow Mr. Hale was involved in having his secretary's parents' farm put up as collateral in connection with a loan. Is that true?

Ms. STRAYHORN. I don't think they were her parents. They were related but I'm not sure of the relation.

Mr. BEN-VENISTE. Do you remember what occurred?

Ms. STRAYHORN. In the case?

Mr. BEN-VENISTE. Yes.

Ms. STRAYHORN. I believe that settled before it got to trial.

Mr. BEN-VENISTE. What occurred in terms of the transaction? What was the nature of what Mr. Hale did with that farm?

Ms. STRAYHORN. The nature of the loan itself?

Mr. BEN-VENISTE. Yes.

Ms. STRAYHORN. I don't think there was anything outstanding in that particular transaction.

Mr. BEN-VENISTE. I'll see if I can refresh your recollection, we'll get some documents up later. You made the request that you not be deposed in this matter to Ms. Fisher? Is that what I understand occurred, or were you passing on someone else's request?

Ms. STRAYHORN. Pardon me?

Mr. BEN-VENISTE. Did you make the request that you not be deposed by this Committee prior to your testimony?

Ms. STRAYHORN. No, I did not. In fact, I was here at 8:30 or 9 o'clock expecting to be deposed.

Mr. BEN-VENISTE. By "deposed" I mean, giving a deposition privately before your public testimony that you're giving.

Ms. STRAYHORN. I understood that that was the arrangement.

Mr. BEN-VENISTE. That you were going to be deposed earlier this morning?

Ms. STRAYHORN. Yes.

Mr. BEN-VENISTE. Who did you make that arrangement with?

Ms. STRAYHORN. I think Ms. Fisher may have mentioned it to me on the phone. It was not spelled out in the letter or the subpoena, but I believe she was relaying how it's typically done, yes. I don't know your procedures here. I haven't followed these hearings at all.

Mr. BEN-VENISTE. I'm trying to catch up with them myself. The Chairman mentioned that you made a request of Ms. Fisher that you not be deposed in connection with this matter.

The CHAIRMAN. Mr. Ben-Veniste, I try not to cut in on other people——

Mr. BEN-VENISTE. Except me.

The CHAIRMAN. I did not say that. I said that Ms. Fisher indicated to Ms. Strayhorn that we would not require her being deposed, inasmuch as much of the information, and I believe we have an ongoing thing that we have people on occasion who have given sworn statements, we have not found it necessary to depose all of them. Ms. Fisher indicated to Ms. Strayhorn that a deposition would not be necessary. Ms. Strayhorn was appreciative of that because that meant she would not have to come in on another day. That's what I said.

Mr. BEN-VENISTE. I must have misinterpreted it——

The CHAIRMAN. Then you did.

Mr. BEN-VENISTE. Or you misspoke, Mr. Chairman.

The CHAIRMAN. I don't think it's your position to tell me whether I misspoke.

Mr. BEN-VENISTE. Or I misheard.

The CHAIRMAN. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. May I inquire just out of curiosity, Ms. Strayhorn, are you represented by—is this your lawyer behind you?

Mr. BEN-VENISTE. No, it's her husband.

Ms. STRAYHORN. That's the only representation I have. No, I'm without counsel. I don't think they have public defenders for witnesses. Or maybe they do.

Senator DODD. I apologize. This is your husband, then?

Ms. STRAYHORN. This is my husband, yes.

Senator DODD. So you're without a lawyer here today?

Ms. STRAYHORN. That's correct.

Senator DODD. Why don't you have a lawyer?

Ms. STRAYHORN. I don't see that I should spend my personal funds to accommodate the Committee or the Special Counsel. I'm here to tell the truth. I don't think there's anything wrong with that, and I don't need legal counsel to tell me how to tell the truth.

Senator DODD. Good for you. I might point out, we have six, seven, eight U.S. Senators here. How many lawyers do we have here on the staff? People raise their hands who are attorneys.

Ms. STRAYHORN. I notice the lawyers have lawyers so maybe I'm in big trouble. I'm not sure.

Senator DODD. How many people are lawyers, will they raise their hands on the staff here?

Senator MURKOWSKI. May I sit down, Senator?

Senator DODD. Sure.

Senator MURKOWSKI. Thank you.

Senator DODD. How many lawyers do we have here? Do we have lawyers back here? I'm just curious, how many lawyers?

The CHAIRMAN. I think this is now getting—

Senator DODD. I just make the point we have six, seven U.S. Senators, a raft of the attorneys here and a witness who has been through four of these processes before. I made a point.

Senator SARBANES. Ms. Strayhorn has touched on something that we need to give some thought to, and that is the people who are called here as witnesses incur significant expense, and if they bring counsel, they have to pay the fees themselves. There's no provision by the Committee to cover counsel fees, and some witnesses have come before us have incurred very large legal bills. Congress ought to give some thought to that.

Ms. STRAYHORN. Senator, all the attorneys I've been associated with are either going to be up here with me or involved with Madison. The only ones that I know and trust. Besides, it would be rather extensive fees just to bring him up to speed on the situation.

Senator SARBANES. Yes. And the travel cost, too.

Ms. STRAYHORN. Should I have a counsel?

The CHAIRMAN. No. Ms. Strayhorn, I think you said it best when you said you didn't need an attorney because all you were going to do is tell the truth to the best of your ability, and I believe that's where you're coming from.

Ms. STRAYHORN. Exactly.

The CHAIRMAN. We appreciate your coming in, and that's why we have attempted to limit the number of times you would have to come in. That was the nature of the communication between our staff and Ms. Strayhorn. This morning she asked to speak to me and we spoke for maybe 2 minutes, in which she said that she had to testify at other cases and was appreciative that we did not have to go through the deposition as well. So that was the nature of our conversation and it was at her request. I thought certainly if a witness was going to come in and ask to meet the Chairman—I have never spoken to you previously, have I, Ms. Strayhorn?

Ms. STRAYHORN. No, sir.

The CHAIRMAN. If she asked to communicate with the Chairman, that that would be appropriate.

Senator SARBANES. Yes.

Ms. STRAYHORN. Was that not proper?

Senator SARBANES. No, it's all right.

Ms. STRAYHORN. I'm sorry.

The CHAIRMAN. Everybody is a little edgy, and we appreciate your being here.

Ms. STRAYHORN. I don't understand.

The CHAIRMAN. You calmed us down a little bit, and brought us back to reality.

Mr. CHERTOFF. Thank you. Let me just kind of pick up where we were. We have before you two exhibits, Plaintiff's Exhibit 5, which you've told us that was the version of the agreement between Ward and McDougal of September 24?

Ms. STRAYHORN. I can't hear you.

Mr. CHERTOFF. I'm sorry. Plaintiff's Exhibit 5, which was the version of the agreement of September 24 between McDougal and Ward, which you've told us you typed. We also have Plaintiff's Exhibit 4, which is the September 24 agreement that you didn't type, but that Mr. Hubbell's secretary appeared to recognize.

Were you aware or did you become aware at some time in the course of your participating in the *Ward v. Madison* case, back in 1988, that the second agreement was a back-dated letter?

Ms. STRAYHORN. Did I testify to that?

Mr. CHERTOFF. No. Did you become aware of it in the course of the case. You worked on the case. You were at the bank when *Ward v. Madison* was going on; right, you were the legal officer?

Ms. STRAYHORN. What date was that case tried?

Mr. CHERTOFF. It started in 1987. I think it was tried in 1988.

Ms. STRAYHORN. Yes, I was basically coordinating legal matters, bankruptcy matters.

Mr. CHERTOFF. You had some responsibility to follow the course of these cases; right? You weren't a lawyer, but you were involved in the cases?

Ms. STRAYHORN. I have been accused of practicing law without a license.

Mr. CHERTOFF. That's a serious accusation. My question to you is this—and I am not saying you should have been—were you aware from your participation in the case, that the second letter agreement, the one you didn't type, was a back-dated agreement? At some point did you learn that?

Ms. STRAYHORN. There were some surprises that were brought out in the trial. Was this not documented in my testimony?

Mr. CHERTOFF. I don't think you testified about it. Let me see if I can help you a little bit.

Ms. STRAYHORN. I am not aware—I don't know who testified to what because I was excluded from that trial.

Mr. CHERTOFF. You may have learned about it afterward. Let me help you by giving you some testimony by others in the same case. There was testimony by Mr. Latham. John Latham had been the head of the bank or the CEO of the bank in 1985 and 1986.

Ms. STRAYHORN. Yes, he hired me.

Mr. CHERTOFF. This is page 105 of the August 30, 1988, trial transcript.

Senator SARBANES. Are we asking Ms. Strayhorn what she had knowledge of?

Mr. CHERTOFF. I am attempting to refresh the witness's memory by calling her attention to some testimony that came out in the trial so I can ask her whether that helps us elicit any further recollection she may have about the circumstances, a practice which I believe has been followed by both sides in the Committee.

The CHAIRMAN. OK, come on.

Senator SARBANES. Except Ms. Strayhorn said earlier that she heard—

The CHAIRMAN. Senator, please.

Senator SARBANES. I just want to make this point, Mr. Chairman, it is relevant. Ms. Strayhorn said earlier she heard so much from so many different places, she was not sure when she learned what when, as I recall.

Ms. STRAYHORN. Exactly. It's been difficult for me to distinguish what I knew, say, at particularly this date and after I even reviewed it with the RTC.

The CHAIRMAN. Ms. Strayhorn, those things that you have no particular recollection of, we understand. If we can give you some documents, they may or may not refresh your recollection. If you have testified in a particular way, I will ask Counsel to make sure it doesn't look like some sort of a trick question, to say, by the way, on such-and-such a day this is what you testified, and then do it. Nobody is going to try to trip you up. That's not the purpose. I want to put your mind at ease.

Senator, if we have any prior statements with respect to something that we're asking this witness to testify to, let's make it known so she doesn't feel we are holding back. I participated in one of those things and it is bad. It is tough when somebody up here has information you don't know, and they have it, and it really verifies what they are asking.

Senator SARBANES. That's my point, Mr. Chairman. We have a team of lawyers up here on all sides and we have a witness without a lawyer—

The CHAIRMAN. She knows that this is not an attempt to do anything other than to get the information.

Ms. STRAYHORN. Basically, my frustration is getting bogged down into the details. You know, the case was litigated, it was settled and, after several appeals. In fact I think it was even settled after I left the receivership.

The CHAIRMAN. We are going to move along, but it is important for us, outside of the purview of that case, to try to get various facts. If you can, help us put some of those facts together so we can get the actual picture of what took place.

Ms. STRAYHORN. OK.

Mr. CHERTOFF. This is not your testimony, this is someone else's testimony at the same trial. It is page 105 of Mr. Latham's testimony, line 16, and it states:

Mr. Latham, while we are looking for that exhibit, let me hand you what has been introduced as Plaintiff's Exhibit 2, which is a September 24th letter agreement marked void and Plaintiff's Exhibit 4, another September 24, 1985 letter agreements.

Exhibit 4 is the one you did not type.

Question: Have you ever seen or did you, while you were at Madison, ever see either one of those letter agreements?

Answer: Yes, I don't know how to differentiate. They are both dated the same. But exhibit number 4 was one that Seth Ward brought to my attention around May or June 1986.

That's the one that's not marked void.

Mr. Ward's testimony, same trial, page 17 of the transcript—

The CHAIRMAN. Wait a minute, we are going to get it for her.

Ms. STRAYHORN. Is she going to charge me secretarial fees?

The CHAIRMAN. No, she is not going to charge you.

Mr. CHERTOFF. Do you have it? It's Bates stamped 139. It's page 17 of the trial transcript.

The CHAIRMAN. You want to bring it down there? We will get it down there. What line is that?

Mr. CHERTOFF. We will start at line——

The CHAIRMAN. No, what line is it?

Mr. CHERTOFF. Line 18.

The CHAIRMAN. Line 18.

Mr. CHERTOFF. This is relating to Exhibit 4, starting on page 17:

Question: What is the date on that agreement?

Answer: The date of the agreement is 24th of September 1985.

Question: Was it executed on that date?

Answer: No, sir. It was not executed on that date. It replaced the original agreement that was executed on that date.

Ms. STRAYHORN. That sounds reasonable, yes.

Mr. CHERTOFF. You remember that. Did you know that from the trial or from something you learned afterward that the main difference between the original agreement and the back-dated agreement, which Mr. Latham testified he first saw in May or June 1986, was that the back-dated agreement carved out a piece of property for Mr. Ward to hold himself that's sometimes known as Holman Acres?

Ms. STRAYHORN. This is the one that Madison held the option on.

Mr. CHERTOFF. Right, this is the same piece of property that later became the subject of that second option which Ward had with Madison that became the subject of the trial. You've put your finger on it.

Ms. STRAYHORN. I think so. As I recall, the voided copy was the one that I had retained in my file.

Mr. CHERTOFF. Right.

Ms. STRAYHORN. But I did not have this of record; is that correct?

Mr. CHERTOFF. I think that's correct. The second one was the one you didn't have anything to do with that was back-dated. It is the second one that for the first time gave Ward that piece of property, Holman Acres, which later became part of the option. So let's get to that second option which is the thing that came up in *Ward v. Madison* trial.

Let me show you SW1-070, the May 1 option to purchase real estate which covered this Holman Acres we have just been talking about. I am going to make sure you have a copy of that; take a moment, if we can, to have you pause and take a look at this.

Ms. STRAYHORN. Oh, I don't do speed reading. Could you tell me the general—I don't recall. I recall the option.

Mr. CHERTOFF. OK. Did you have anything to do—and let me put it in context for you. What we have established so far is that you prepared an original agreement, which you've told us you had in your file back around September 24, relating to the original arrangement between Ward and McDougal on the purchase of this land. You later learned there was a second agreement prepared. Your agreement was marked void. The second agreement prepared was back-dated. You had nothing to do with that.

That second agreement carved out a little piece of this property for Ward to keep, which is known as Holman Acres. Holman Acres became, as you know, the subject of a bunch of loan documents in

early 1986 where money was loaned against that piece of property, was secured by that piece of property, Holman Acres, and where that piece of property, Holman Acres, also became the subject of this option to purchase real estate.

Showing you the option that you have before you now, which was prepared on May 1, 1986, were you aware of this option before the *Ward v. Madison* trial?

Ms. STRAYHORN. I was not aware of this option.

Mr. CHERTOFF. Do you know to this day how that option document got prepared or who prepared it?

Ms. STRAYHORN. If my initials are on it—

Mr. CHERTOFF. No, they are not. I guarantee you—

Ms. STRAYHORN. OK.

Mr. CHERTOFF. Again, so we don't surprise you, there is evidence in the record that Mrs. Clinton prepared this document. My question is whether you had—other than what you may have heard in the newspapers or things of that sort, did you have any knowledge of that, you know, before this came up in the last couple of weeks?

Ms. STRAYHORN. That Ms. Clinton prepared the document?

Mr. CHERTOFF. Yes.

Ms. STRAYHORN. Why wouldn't he have his son-in-law prepare the document?

Mr. CHERTOFF. You mean why wouldn't Mr. Ward have Webster Hubbell prepare the document?

Ms. STRAYHORN. Of course.

Mr. CHERTOFF. That's a very good question.

Ms. STRAYHORN. I mean, am I allowed to ask questions, Mr. Chairman?

The CHAIRMAN. Ms. Strayhorn, we are going to give you great latitude. You can make any observations you feel appropriate.

Ms. STRAYHORN. Thank you. I need all the help I can get.

Mr. CHERTOFF. I don't think so. I think we do.

The CHAIRMAN. You are doing very nicely, thank you.

Mr. CHERTOFF. Is it your impression Mr. Ward used Mr. Hubbell to do some of his legal work with respect to his business?

Ms. STRAYHORN. That Mr. Ward used Mr. Hubbell? I don't know of it in this particular instance, but you know, there's been known to be kinfolk prices.

Mr. CHERTOFF. Kinfolk prices, I think I have heard about that even where I live. You have raised a legitimate question—I can't answer it. I guess you can't either—which is, why Mrs. Clinton would have drafted this option rather than Mr. Hubbell.

Let me ask you this: At this trial of *Ward v. Madison*, this trial that took place in 1988, am I right that one of the big questions in the case was whether this option agreement was meant to really cover commissions that were owed to Seth Ward from the original property deal in 1985?

Ms. STRAYHORN. Correct me if I am wrong. I don't think the option agreement was a part of that, I think the loan itself was. Testimony may have been provided to establish that the intentions of the loan itself was to pay the commissions that Mr. Ward felt he had earned.

Mr. CHERTOFF. We have in the record testimony of the trial about the option and one of the things I want to try to explore with

you is if you know why Mrs. Clinton wasn't called at the trial to give whatever information. I am just going to ask——

The CHAIRMAN. She is not going to know that, come on.

Senator Sarbanes.

Senator SARBANES. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much.

Ms. Strayhorn, I want to make sure this is an accurate description of your testimony. You testified that you thought the removal of McDougal was probably warranted and it probably would have happened sooner, and these are quotes:

The Federal Home Loan Bank was not equipped to monitor; I mean, they had cut staff, they did not have an office here at one time and then they consolidated all of their offices in the Dallas area. I think they just did not have enough people.

You go on to say:

I think they waited too long and let it get too bad. I think before the Industrial Development thing, if they had come in before then, in fact, I think that Madison could probably have been pulled out of it, [meaning the bankruptcy] if it hadn't been for that last Industrial Development transaction.

That's taken from your testimony. Is that an accurate——

Ms. STRAYHORN. I'm sorry, Ms. Boxer. Which testimony?

Senator BOXER. That was taken from the Pillsbury interview. Does that sound like something you would say?

Ms. STRAYHORN. On occasion, I have been known to get carried away, yes.

Senator BOXER. And you basically say that you think that they waited too long. The Federal Government waited too long, had they come in sooner, this failure could have been averted. That's what you basically testified to.

Ms. STRAYHORN. I am not sure. Was I referring to the examiners or to the FDIC?

Senator BOXER. The examiners. You said they had been moved to the Dallas area, after they acknowledged that they didn't have enough people, they waited too long and had let it get too bad?

Ms. STRAYHORN. That's correct. Madison Guaranty was under a supervisory agreement from, I believe it was the 1984 exam. Don't quote me on this because I don't know that much about regulations, I have learned a lot, but probably not enough to discuss it—I think it was a general attitude of people that I was around at Madison that Madison Guaranty was past due under that supervisory agreement.

Senator BOXER. OK.

Ms. STRAYHORN. At some point in time, in retrospect, I may have said that, yes.

Senator BOXER. I think you hit the nail on the head. Senator Murkowski asked an important question on Tuesday, page 94 of the transcript and I quote:

Why wasn't action taken after the 1984 exam prior to the 1986 exam which resulted in a cease and desist order? Why wasn't there some action taken? Somebody in the examination process seems to be falling short on their duty to followup or exposing certainly the taxpayer to additional potential loss here.

The key question here is not about who said what to whom and what lawyer did they hire. The basic question is, "Why did the Fed-

eral regulators wait too long?" If more action had been taken before 1986, Madison losses could have been stemmed, perhaps prevented. Our witness, in her way, has so stated.

Senator MURKOWSKI. I wonder if the Senator from California would yield.

Senator BOXER. Certainly, if I can just make sure I get extra time if I need it.

Senator MURKOWSKI. Sure. I think it is important to note the response of the examiner to my questioning, which I think would shed some light on the concern the Senator from California has and the concern I have.

Senator BOXER. Yes, but I would say if there had been losses stemmed, there would have been no Castle Grande transaction. I think it is very important that we get to that question, rather than some—excuse me for feeling this way—political agenda.

I want to get to what we are to do here. I think that Ms. Strayhorn, in her interview with Pillsbury, said it correctly. Regulators waited too long and they let it get too bad. They moved their regulators from Little Rock to Dallas and slowed down regulatory activity. Who did that? It won't please my Republican friends here. I know it doesn't please any of us.

The fact is it wasn't Governor Clinton who was responsible for the lack of action at Madison. The answer can be found in the reports of the Federal Commission of the Savings & Loan Crisis, the FIRREA Commission. Here it is. A bipartisan group appointed by Congress and President Bush. What did they find out? What can they tell us?

The Commission's records show how the Reagan Administration systematically impeded savings and loan regulators and how the effect was greatest on Dallas regulators whose territory covered Arkansas and Madison Guaranty. For example, the report documents how the Reagan Administration thwarted attempts—a small but an important point—they thwarted attempts to increase the Federal S&L regulators salaries which were 30 percent below Federal bank regulator salaries, which in turn were below private sector salaries.

If you want regulators, you have to pay them. The Reagan Administration didn't want to do that. Every time the Home Loan Bank Board tried to raise S&L regulators' salaries, the Reagan White House moved to prevent it. Consequently, between 1980 and 1984, under the Reagan Administration, the number of S&L examiners dropped while the savings and loan crisis mushroomed.

We sit here, and hear people digging into who said what to whom and when and where. We are losing sight of the big picture. Why did this happen? Why are we here looking at this?

In September 1983, the Reagan Administration moved the headquarters of the Home Loan Bank from Little Rock to Dallas. The S&L Commission records show that the Reagan Administration gave the Little Rock-based regulators minimal help.

I'm going to quote from those S&L regulators who said, when they were moved to Dallas, they felt "it was in the hope of spurring resignations." Consequently, more than 75 percent of the senior regulators, 37 out of 48 senior regulators, were lost. In 1984, 43

percent of Dallas' examiners, those who covered Little Rock and Madison Guaranty, had less than 2 years' experience.

My colleagues, this is all in the bipartisan report.

When three-quarters of your senior regulators quit, and nearly half of the remaining examiners have less than 2 years of experience, is it any wonder that no one followed up at Madison? Is it any wonder that it took 2 years for the regulators that were left to get around to tiny Madison. They had their hands full coping with six Texas S&L's, each creating more than \$1 billion in taxpayer losses. We are talking \$60 million in Madison's loss, which is atrocious. Taxpayers would have to back \$60 million of losses that could have been prevented if we had the regulators there.

Why aren't we looking at the S&L's that produced billions of dollars in taxpayer losses, bringing people up to testify about them? The answer is obvious, Mr. Chairman.

Madison was shut down by dedicated Federal civil servants, but it was despite, not because of, Reagan Administration policies. It was Clinton's State appointees who asked for the shut down.

The S&L Commission describes how Edwin Gray, head Federal S&L regulator during the Reagan Administration, a Republican, had to fight every step of the way to hire and keep regulators.

This is how Gray described being treated by the White House Chief of Staff for his efforts:

I was asked to resign by Donald Regan. He repeatedly accused me of betraying the President and his policies. All of these actions were intended to generate obedience on my part to have the effect of causing me to buckle under to the Administration's pressure.

The FIRREA Commission described how Gray eventually managed to end run the Reagan White House Office of Management and Budget. In mid-1985, Gray persuaded the regional Home Loan Banks, which were under much less control of the White House, to hire new examiners. They immediately set about doubling the number of regulators. God bless Mr. Gray.

At the same time, Gray got them to move a task force of 200 Federal examiners from all over the country to the Dallas office. As Gray described it to the Commission:

I secured these changes in the face of exceedingly strong opposition, threats and intimidation from key persons in the Reagan Administration.

Threats and intimidation. Mr. Gray prevailed and 200 examiners were moved to Dallas. They included the two examiners from Indiana whose work eventually shut down Madison.

When Senator Murkowski asked the question why didn't it happen sooner, history, documented in a bipartisan fashion, shows us it was because of Reagan Administration policy.

I have to say, in my concluding remarks here, that the Arkansas Clinton Administration didn't delay the closing of Madison. Not a shred of evidence has been produced to indicate that. The answer is Madison was allowed to fester because of the Reagan Administration. The fact of the matter is, this Committee, at the time, didn't do a thing to look into those Reagan Administration policies.

Mr. Chairman, as I look through all of these historic documents, we ought to be looking at why those Federal regulators were inhibited by the Reagan Administration. That's the true issue, not the reasons for only \$60 million of losses, but the billions and billions

of dollars. Our President Ronald Reagan, greatly beloved—on the S&L Deregulation Bill, said “we’ve hit the jackpot.” That’s true. The jackpot was hit by plenty of greedy individuals and we are meeting only a few of them through this investigation.

This Committee, instead of looking at how to prevent this in the future, is getting into the details of one relatively small S&L failure here, dragging people up, at great expense and putting them through hell. You’ve got FBI agents all over this case. I have to conclude in my heart that as you come back and ask us for even more money, that this is part of a political agenda.

The bad actors in this are going to go to jail. We will make sure of that, that’s why we have the criminal investigation going on. What we are about, it appears to me is a political agenda, and I think today’s witness, in her statement that I read to you, “I don’t think the regulators had enough people, they waited too long and they let it get bad,” gets to the core of why it took so long to shut down Madison.

Thank you very much.

The CHAIRMAN. OK. We are going to continue.

Mr. Chertoff.

Mr. CHERTOFF. Ms. Strayhorn, let me now see what you can help us with in terms of the trial that ultimately occurred and what happened with Ward and his dispute with Madison over the commissions. Could you tell us, as best as you can remember from your work on this matter, what was the essence of the disagreement between Ward and Madison as it came up in the course of this trial?

Ms. STRAYHORN. I think it was pretty simple. The nonrecourse loan—and I think it was \$300,000, correct me if I am wrong—Madison contended was his commissions. Mr. Ward contended that it was not. I never did really see the whole point of his view, but I think that was Madison’s position, and that’s pretty simple.

Mr. CHERTOFF. Let me see if I can understand it, and tell me if I am right or I am wrong. Simplified, in early 1986, Madison loaned Ward money as a nonrecourse loan?

Ms. STRAYHORN. There were a series of loans that rolled into this loan that was still outstanding. I believe that was a nonrecourse loan. To expand on that, Mr. Ward contended that the property, which consisted of Holman Acres property, was Madison’s security for that loan. I am not sure if it’s ever really proved in court, but I think it was Madison’s contention that the purpose of the nonrecourse note was to pay him his commissions, and that the property wasn’t part of that basis.

Mr. CHERTOFF. Ward claimed that he was entitled to additional commissions?

Ms. STRAYHORN. Yes; as I recall, another \$300,000.

Mr. CHERTOFF. The bank took the position that essentially the money that had been given to Ward already in connection with this loan was secured by this property, that that had been meant to cover whatever commissions he was owed out of this original deal. Is that basically right?

Ms. STRAYHORN. It sounds kind of a complicated way of establishing, but—like I say, just simplified, I believe that was—this is my perception, that Madison’s contention was this was his commis-

sion; Mr. Ward's contention was that he was owed an additional amount, \$300,000 more or less.

Mr. CHERTOFF. Let me see if I can understand how this property relates to the option. You've told us that the Holman Acres was listed as security for this \$300,000 loan; is that your recollection?

Ms. STRAYHORN. That's the general idea, yes.

Mr. CHERTOFF. I think it turns out that this is the very same piece of property which is the subject of the option, which we've shown you, which was prepared by Mrs. Clinton.

Ms. STRAYHORN. From my recollection, I believe that is true.

Mr. CHERTOFF. I think Mr. Latham testified that in fact the purpose of the option was to be a means by which—and Latham was testifying for the bank—was to be a means by which Ward could get his commission. Does that fit with your general memory?

Ms. STRAYHORN. Oh, my memory was my own perception of the deal. It was not included in the option—you know, the option was not a part of that perception, no.

Mr. CHERTOFF. I am going to read you, not your testimony, but Mr. Latham's testimony. We will give you a copy of it. It is page 101 of the transcript, and it refers to this option document, which we have shown you, which we have established is prepared by Mrs. Clinton.

We have at page 101, starting at line 4, to read along, this is questions of Mr. Latham. It states:

Question: I want you to look at now what has been introduced as Defendant's Exhibit 3, an option to purchase tracts 27 and 28 of Holman Acres. Can you tell the jury about the circumstances surrounding the financial corporation taking an option out on this property?

Answer: Yes. I know this is confusing, but the loan was done really at that time in lieu of the option.

I think here he is referring to that \$300,000 loan you are testifying about. It continues:

The option more concretely or more accurately reflects the nature of the transaction, that being that the service corporation owed Seth \$300,000 in commissions. In the initial purchase of all of that property, Seth retained tracts 27 and 28 of Holman Acres as his commission, which was later to be bought by the service corporation.

I think that's that second back-dated agreement I showed you where he gets to keep these two tracts. I think what Latham is saying here is that letting Ward keep those two tracts in that back-dated agreement was the way of giving him his commission because he would later be able to resell it.

Latham goes on to testify:

The option allows the service corporation to buy the property from Seth, thus Seth receives the \$300,000, and the service corporation would have the property.

Latham goes back to talk about the loan the \$300,000 loan you have been discussing and says:

The note was done very quickly to make sure that that debt was evidenced, should something happen to anybody, to protect Seth. The note, however, would have left, if that was the way it was finally structured, would have left Seth with the \$300,000 plus the property, which was not the intent of the transaction.

That's Mr. Latham's explanation of the transaction——

Ms. STRAYHORN. I would defer an opinion to Mr. Latham since he was a part of that agreement. I was not.

Mr. CHERTOFF. You would defer to Mr. Latham as having a more complete understanding of what happened?

Ms. STRAYHORN. That's correct, yes.

Mr. CHERTOFF. OK. I am trying to understand how the option fits into the overall deal. The way I understand the paperwork, and basically, the testimony, to the extent you have been able to help us, is that this deal starts out, in the agreement you prepare, as a deal where Ward is going to take the northern part of the property and hold it. Madison Financial is going to hold the southern part. Ward is going to give Madison Financial an option to take back the entire property so that they can combine it.

There is a second agreement, which is the one you don't have anything to do with that's back-dated, that Latham says first appears to him in May or June 1986. That agreement changes the deal, and says that Ward, when he returns the property to Madison, is going to get to keep a couple of parcels for himself. That's Holman Acres. We understand from Latham's testimony here that that was supposed to be Ward's commission for agreeing to this arrangement where he warehouses the property.

What happened in the spring of 1986, as near as I can tell, is what they intended to do was to let Ward sell his parcels back to the bank for \$300,000. Ward would pocket the \$300,000 and that would be his commission for doing the original deal. Because the examiners were there and there was some concern that something might happen, what they decided to do, as Latham says, is get a note out very quickly, get a loan out very quickly to Ward so that he would have the \$300,000 in pocket.

It would be a nonrecourse note. It would be secured by the very same property, this Holman Acres, and that way, if something happened and Ward wasn't able to do an outright open sale of the property, he could still get to the same result by simply defaulting on the note, in which case since it is nonrecourse the note would go back to the bank and the money would stay with Ward.

You have tracts 27 and 28 of Holman Acres, which is both the subject of this note and this loan, secures this nonrecourse loan, which is what you know about. You know about the nonrecourse loan?

Ms. STRAYHORN. I came to learn about the nonrecourse loan.

The CHAIRMAN. Counsel, please don't do that. I've listened to a 15-minute filibuster, I let her go over the time, reading of the records. When we are trying to examine the witness, you may not follow it, fine. You may want to ask amplifying questions, but I am going to ask you, please, not to interrupt. Go ahead.

Mr. CHERTOFF. OK, you know about the \$300,000 loan that was secured by Holman Acres because you have told us about that. I gather you don't know much about the option, which covers the very same piece of property; is that right?

Ms. STRAYHORN. I had reviewed it to some extent, but I was not aware of that. You seem to have a better understanding of it than I, so—

Mr. CHERTOFF. Well, I have had the benefit of looking at Mr. Latham's testimony.

Let me ask you this. The fact that you have this same piece of Holman Acres property, which is both the security for this loan and

also the subject of this option that was prepared by Mrs. Clinton, what do you remember, in connection with anything you knew about in the preparation of this trial, about what efforts were being made to find out on the part of the bank how this option came to be written? Did anybody ask you, was there some effort made by the lawyers for the bank to figure out how this option for Holman Acres was prepared and agreed to?

Ms. STRAYHORN. I'm sure if they knew about it they would have investigated that deal. We looked at so many aspects of that case and it drug on for months. I don't recall it exactly—in fact, we changed attorneys when the Resolution Trust Corporation moved cases to Federal court.

I am sure that at some point, this option was reviewed extensively. I just don't have enough knowledge about that to discuss it.

Mr. CHERTOFF. That's what puzzles me about it. I look at the case. I see that the option is really the centerpiece of this litigation, over \$300,000 or \$400,000. It kind of shows up in the transaction, no one really seems to know how it comes up. Mr. Ward testified in the trial that he didn't prepare the option. The option clearly lies at the center of this mystery about how Ward gets the commission.

We learned that the option wasn't prepared simply by someone inside the bank or even by Webster Hubbell, but the person who prepared the option and the billing records show that on the day the option was prepared, Mrs. Clinton talked to Mr. Hubbell. We now know Mrs. Clinton, not Mr. Hubbell, prepared the option and talked to Mr. Hubbell about it—I'm sorry, to Mr. Ward about it.

My question is this: In all my experience, when your people are having a case, a trial about a document like an option that's central to the case, the first thing they do is they run out and find the lawyer who wrote the agreement because they want to know what the lawyer said about the option.

This is not your responsibility, you had lawyers who were supposed to be doing this.

Ms. STRAYHORN. I beg your pardon, but I don't understand the importance of who prepared the document. I don't recall that Mrs. Clinton's name ever came up in the discussions in the investigation, the litigation.

Mr. CHERTOFF. You put your finger on exactly what it is that raises the question in my mind, because if you are having a dispute, testimony back and forth, where Ward is testifying about who prepared the option, Latham is saying something different about the option, you've got \$300,000 hanging on the outcome of this case, one of the first things that—and this is not your job, it is the job of the lawyers, one of the first things the lawyers should do is figure out how did this option get written, what is the background. The first thing you do is you go out and find the lawyer who wrote it and you ask the lawyer how did this get written, what were the negotiations.

You have put to me what I think is the main question. Nobody called Mrs. Clinton, no one—Mrs. Clinton's name didn't come up in connection with the preparation of the option.

Ms. STRAYHORN. I don't know that the attorneys for Madison were even aware that Mrs. Clinton may or may not have—I don't think that was a significant issue at that time.

Mr. CHERTOFF. Well, it is all over the trial. There's conflicting sworn testimony about it in the case, and I think you are raising the very question I have. How is it that neither the attorneys for Mr. Ward nor the attorneys for Mr. Madison seemed to know the lawyer who drafted the option that lay at the heart of the case?

Ms. STRAYHORN. I still don't see the importance of that.

Mr. CHERTOFF. In any case, none of us knew about it until a couple of weeks ago, and I will tell you the importance of the case is what Mr. Latham says. Mr. Latham's testimony is that the whole loan issue was really tied to the option, and that both the loan and the option were ways—and this is from page 101. It states:

The option allows the service corporation to buy the property from Seth, then Seth receives the \$300,000, and the service corporation would have the property.

In other words:

The option more concretely or more accurately reflects the nature of the transaction, that being that the service corporation owed Seth \$300,000 in commissions.

What Latham swore under oath in the trial was that the option agreement was meant to be the device or the means through which Seth would take that \$300,000 commission for the property and that he wouldn't be entitled to be paid yet another \$300,000.

Seth said no, the option was something completely different, I am still owed that original \$300,000. In deciding what that option meant—

Ms. STRAYHORN. I'm sorry. Mr. Chairman, could we have a short break? I am nodding off here.

[Laughter.]

The CHAIRMAN. Absolutely. Let me just confer with the Ranking Member, because we have been pushing long and hard and taking lots of hours. I'm thinking that possibly we take a lunch break now, instead of coming back in 5 or 10 minutes, come back at 1 p.m.

Senator SARBANES. Mr. Chairman, I don't think we have a lot of time and I don't know how much time we need on your time, although if Mr. Chertoff is going to go on and on without a question to this witness—

The CHAIRMAN. Senator, I didn't do it to be argumentative. I suggest it in the spirit of some kind of accommodation, that if you wanted, we would take a break til 1.

Senator DODD. May I make a suggestion? We are going to have cloture votes at 1:30, back to back, so we might get caught on that aspect—

The CHAIRMAN. Let's take a short break and return at 12:15.

Senator MURKOWSKI. Mr. Chairman, may I make an inquiry, what the order is relative to a few questions I might have for the witness.

The CHAIRMAN. As soon as it comes back to our side, we will come to you for some questions.

Senator MURKOWSKI. Senator Bond was here before I was.

The CHAIRMAN. Senator Bond will ask his questions. The Minority side for whatever time they want to use.

Senator MURKOWSKI. For 10 minutes and then Senator Bond for 10 minutes and then the Minority for 10 minutes, and then I would probably have a chance.

Senator BOND. Mr. Chairman, I may not use my full 10 minutes, so I would try to have some available.

The CHAIRMAN. We will try to wrap it up by 1:30 before the first cloture vote, so we will return at 12:15 sharp.

Ms. STRAYHORN. I want to leave town on my 6 p.m. flight.

[Recess.]

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I want to make an observation. I don't know how long we're going to keep Ms. Strayhorn here, but I hope at some point we can question her. I was struck that we ended, before we took the break, on the note that she was nodding off as we all sat here and listened to Mr. Chertoff.

I don't see what purpose this serves, if we get a question that's prefaced by saying well, we understand that you don't know about this, Ms. Strayhorn, but here is what Mr. Latham said. We quote extensively from Mr. Latham, and then at the end of that, Ms. Strayhorn says: "Well, you would be better served by going to Mr. Latham for that rather than me, because he is the one who would know about that." Which is, of course, what Counsel said at the beginning.

It is a strange way of proceeding. We have this witness and if there is information that she has to provide, we ought to get it from her. This process is just wasting time. We have extensive testimony on public record.

The Pillsbury Report detailed the options and agreements, and concluded that no wrongdoing had been done. If those want to be challenged, people can do that, but we ought to have witnesses who have knowledge and can respond to them.

I don't see what purpose is served by Counsel saying, I know you don't know about this, but this is what he said. Then the witness says, well, I don't know about it, he will be the better one to hear from.

Senator Dodd.

Senator DODD. Thank you, Senator Sarbanes.

I was going to make that same observation. I wasn't in the room, but I was listening to the question. Nothing is ever done as simply as we all would like. There are always some elements, and I guess we can make our point in our question, knowing full well that the witness can't answer the question. We made the point in question, that's it, so we begin to become more advocates than making legitimate inquiry.

It may have been noted already, but the reason I made the point I did at the first round that I had, was I went through and tried to calculate the pages of testimony that you've already given; 181 pages in the McDougal trial, 147 pages for the Pillsbury review, 25 pages in the Ward civil testimony.

Ms. STRAYHORN. Thank you for stating my point.

Senator DODD. The RTC IG statement, 5 pages, I don't know what the total is. That's a pretty heavy body of evidence to be able to have, in terms of the value you can provide the Committee.

I don't envy the position of the Chairman, this is a difficult job. There have been suggestions that somehow this is personal—it is not personal. I don't envy sitting there trying to manage these people on both sides who have their own views they want to pursue.

The Chairman understands the frustration our side feels in terms of not trying to get this over with quickly, but to get it done in an expeditious way and to speed it up.

We have no votes now. We have primaries all over the country so the Majority leader and others are out there. This isn't unique and isn't the first time that its happened. We have a window here, a couple of votes this afternoon, but no more scheduled votes until the end of the month.

Here it is February 1, with no votes until February 26, and we will hopefully get through by February 29. I am willing to listen to what the Chairman has to say for a few extra weeks to speed the process along.

Ms. STRAYHORN, you have repeated this probably 10,000 times, but you worked for Mr. McDougal from February 1985 until he was thrown out in July 1986, at least on that particular matter, a year and a half?

Ms. STRAYHORN. It seems like a lifetime.

Senator DODD. 10 years ago?

Ms. STRAYHORN. I started to work 11 years ago, this month, as a matter of fact, yes.

Senator DODD. I think you've done remarkably well, and most of us here have said this over and over again. To try and ask someone to go back in detail of events 10 and 11 years ago is asking a lot. I am deeply appreciative of your willingness to be here today, and your willingness to be as forthcoming. I think you have been tremendously helpful to the Committee.

I will make the plea, Mr. Chairman, I would hope we might get a longer list of witness that we can hear from in the coming days. I know that Senator Sarbanes has made that case, and others have. I think we can get the work done. We are not going to get another time like we've got right now without votes to be able to go Monday through Friday, 8 hours a day, and wrap this up.

A witness or two a day, particularly ones where we have already gotten a tremendous amount of information from, a great body of evidence exists already, my own view is, that it—we're delaying for the sake of delay. That's my personal observation. My hope is we could change that format.

With that, Mr. Chairman, I will be glad to yield some time to my colleagues, Senator Sarbanes or Counsel on this side and if not for them then turn it back over so we can move right along whatever they desire.

Senator SARBANES. Mr. Chairman, I understand the Committee will not be meeting either tomorrow, Friday, or Monday.

The CHAIRMAN. Tomorrow is Friday.

Senator SARBANES. We are not meeting tomorrow.

The CHAIRMAN. No.

Senator SARBANES. Or Monday.

The CHAIRMAN. No. Tuesday, Wednesday, and Thursday.

Senator SARBANES. Who will we be hearing from on Tuesday?

The CHAIRMAN. I think there is a list that's been provided, and again we have identified 60 potential witnesses. We will be having hearings again Tuesday, Wednesday, and Thursday. The staff, I would hope, is working cooperatively to furnish the Majority and

Minority those witnesses and those potential witnesses, subject to buttoning down their time schedules.

For example, whether it is Ms. Strayhorn or someone else and their lawyers. In this case, it was probably easier because we didn't have to contend with some attorney and his scheduling conflicts to come. We are pursuing it.

Senator SARBANES. I would like to suggest, Mr. Chairman, as I indicated earlier, that I thought we should do a 4- or 5-day a week schedule. We did that back in the summer at a time when we were also trying to do legislative business. The demands and the pressures on the Members, in terms of the allocation of their time, was much greater than it is now.

The CHAIRMAN. Let me say this to you: As a practical matter, I will examine the question of whether we can add, and the staff can handle the additional time. I am not going to preclude adding additional days, but I will look into having Friday sessions. We have limited resources and there is a problem preparing the witnesses, but I will look into it.

We did not go through a deposition with Ms. Strayhorn, simply to accommodate her, and we felt the accommodation was correct and proper. Someone in the media asked me if we did the right thing? Absolutely. She would have been examined privately, and if need be, to bring her in again. We decided we would just try and do it with one shot. With this witness we did the correct thing.

I will take under advisement the suggestion to add additional days, if it makes sense, and if we can get and identify more witnesses who can come in during those periods of time and who we can get in, it would be my inclination to go forward and add additional days.

Senator SARBANES. Mr. Chairman, let me say I think it was very reasonable not to take Ms. Strayhorn's deposition since we have all of this material. We have her testimony at two trials, extensive testimony in the RTC inquiry conducted by Pillsbury—it is all right here and this is all public record as well.

Ms. Strayhorn has testified repeatedly in many venues and it is all available to the Committee. I agree, I don't think there was a need to take her deposition and there are other potential witnesses who are in the same position.

Senator DODD. Mr. Chairman, I was going to make the point too, in some cases where a deposition by Counsels would eliminate the need to bring them in as a public witness, thus abbreviating our time here. Of the 670 witnesses, Counsel may discover that 10 or 15 of them really don't have anything more to contribute than what they have already, so you thin down your list. As I calculate it, if you have five or six witnesses a day, 4 or 5 days a week, for two panels, in 10 to 15 days, you could complete this process.

The CHAIRMAN. I think the Senator has touched on something—even when we are not in session, the staff has been working. They are examining witnesses, reviewing documents, and that's why we are being able to put this together.

There are certain witnesses that we have precluded from examining as a result of the special prosecutor and the pending trial. One of the reasons I have indicated that I am not prepared to move today or tomorrow for an extension of time is because we do have

Senator BOND. Did others in the corporation, to your knowledge, come in and work over the weekend?

Ms. STRAYHORN. I think there were some people in the loan department, but at that time, I was employed by Madison Financial Corporation.

Senator BOND. At that time, what kinds of activities were you engaged in, in your work for Madison Financial, as part of that "activity" in February 1986? Were you recreating minutes of board meetings?

Ms. STRAYHORN. Actually, I was just recording—you know, doing the secretarial support.

Senator BOND. You were typing up minutes for meetings that had happened previously, and you were transcribing them; is that correct?

Ms. STRAYHORN. Something of that nature, yes.

Senator BOND. What else did you type up at that time that reflected on the work previously done at Madison Financial?

Ms. STRAYHORN. Are you referring to something specific?

Senator BOND. We are learning more about this as we go along. You typed up minutes that had been recreated previously. Do you recall if you typed up any other documents that referred to something that happened some time ago that they were preparing to put in the files in case of an examination?

Ms. STRAYHORN. Are you speaking of loan or corporate files?

Senator BOND. Corporate or loan files.

Ms. STRAYHORN. Nothing comes to mind at the moment. Maybe after some thought, right now, I cannot think of anything specific. Senator BOND. If you later do, we would appreciate it if you would let us know, but that answer is fine. I was just asking that for information.

Did the examiners, in fact, come into Madison Guaranty shortly after you completed typing up the minutes for previous activities? Ms. STRAYHORN. I don't remember exactly when I actually typed those Madison Financial Corporation minutes. I have been asked that question on several occasions, you know, if the minutes were generated, which I agreed to that, but I can't remember when. Senator BOND. I am not asking you the specific date. Do you recall if it was shortly thereafter, within a few days or a week or longer, that the examiners came to Madison Guaranty?

Ms. STRAYHORN. I'm sorry, I just can't—

Senator BOND. That's all right.

Ms. STRAYHORN [continuing]. Narrow that time period down. Senator BOND. That's fine.

Do you ever recall seeing Mrs. Clinton visit the offices where you worked for Mr. McDougal? Did you see her at Madison Financial or Madison Guaranty?

Ms. STRAYHORN. I only recall seeing Mrs. Clinton one time, and I don't even remember what date that was. But, yes, she visited with Mr. McDougal for a short period, but I only recall seeing her maybe once.

Senator BOND. That was in Mr. McDougal's office?

Ms. STRAYHORN. She met with him in his office on one occasion,

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Senator BOND. That was in Mr. McDougal's office?

Ms. STRAYHORN. She met with him in his office on one occasion, yes.

Senator BOND. That would have been in the period you worked for Mr. McDougal which you said was February of 1985 until Mr. McDougal departed in the summer of 1986?

Ms. STRAYHORN. She visited the office in the savings and loan, so it was early on.

Senator BOND. After you went to work there and prior to the time that Mr. McDougal—

Ms. STRAYHORN. Prior to the time he vacated his office, yes.

Senator BOND. To your knowledge, that's the only meeting they had on the premises of Madison Financial or Madison Guaranty?

Ms. STRAYHORN. That's the only one I can recall.

Senator BOND. Thank you Ms. Strayhorn. These points may or may not be important. We appreciate your testimony.

Mr. Chairman, I had hoped to yield my colleague more time than this, but that completes my questions.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Maybe I should wait for my turn.

Senator SARBANES. We will be very brief. We have only a couple of questions. Ms. Strayhorn, this letter that was shown to you, the one you signed as a legal officer in 1990. This was much later. This is when Madison was in the hands of the Federal Government people; isn't that correct?

Ms. STRAYHORN. Let's see, 1990? I think this was during the conservatorship, and correct me if I am wrong, but I believe Madison Guaranty was not placed in receivership until later that year, if I recall. I am not sure.

Senator SARBANES. I guess the important point is, when you were working for Mr. McDougal, you weren't a legal officer, and didn't represent yourself as a legal officer?

Ms. STRAYHORN. No, definitely not.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Strayhorn, the information about typing up minutes of Madison Financial, catching up with the board minutes that had not been prepared, that was the subject of testimony that you gave back in 1989. You testified about this extensively, to the best of your recollection?

Ms. STRAYHORN. Well, you have to understand, too, that Madison Financial didn't have a full sitting board. It was, like, a couple of people, so they didn't always stand on formalities.

Mr. BEN-VENISTE. Yes, with a small company, I am not suggesting that Madison Financial didn't have irregularities. By the same token, when there is a small company, often the board minutes are prepared pro forma, and not necessarily contemporaneous with the calling of meetings. Is that your understanding based on your experience?

Ms. STRAYHORN. If I follow, yes sir, I believe that's the gist of it.

Mr. BEN-VENISTE. With respect to the meeting between Ms. Clinton and Mr. McDougal, you indicated that there was one meeting when Ms. Clinton visited Mr. McDougal at his office at the savings and loan and it was no big deal in terms of your recollection. Let me ask you whether you recall when that meeting took place. We know it was before Mr. McDougal moved out to his trailer.

Ms. STRAYHORN. It had to have been between February and February of the next year, yes.

Mr. BEN-VENISTE. Let me see whether this refreshes your recollection. I am quoting from Mrs. Clinton's answers to the RTC:

I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him. I agreed to go see McDougal. I visited him at his office on April 23, 1985. I told him I understood Latham wanted Massey,

I am focusing on this April 23, 1985. Is that about the time that you recall a visit having taken place?

Ms. STRAYHORN. I was not aware of any representation, so I don't believe I would be the one to comment. I just don't—

Mr. BEN-VENISTE. Not about the content of the conversation, about the time of the meeting?

Ms. STRAYHORN. I just don't recall.

Mr. BEN-VENISTE. OK. Is there anything that you know that is inconsistent with that date?

Ms. STRAYHORN. I don't think I would have an assessment of that, no.

Mr. BEN-VENISTE. With respect to the question posed by the Senator from Missouri, we have the benefit of Mr. Clark's interview which was taken on October 20, 1994. Mr. Clark was the Federal Home Loan Board Bank examiner, who actually came to do the 1986 examination. He stated:

In the normal course what happens is a request letter for information is sent to the institution. And in that letter it would tell them what date we expect to arrive. Normally, that request letter would have been sent out a few weeks, at least, in advance. That was sent out from the Little Rock offices, at least as far as I know, but they would have known we would have been coming into the institution at least a few weeks ahead of time for that reason.

Does that comport with your recollection of events that, at some point prior to the arrival of the Federal Home Loan Bank examiners, there was an understanding that they would be coming?

Ms. STRAYHORN. I worked for the service corporation, and I was not aware—I mean, that was just the general attitude that, you know, that we should expect them. Whether they got notice or not, that was not privy to my area, no.

Mr. BEN-VENISTE. Thank you very much, ma'am.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman. Let me welcome the witness. We kind of relate to responsibility in each individual witness. As I understand the situation with regard to Madison vis-a-vis Madison Financial, you were all kind of under one roof?

Ms. STRAYHORN. Yes, sir.

Senator MURKOWSKI. You were all—

Ms. STRAYHORN. For a period, yes.

Senator MURKOWSKI. You were under the roof of the S&L, you worked out of there, but—

Ms. STRAYHORN. I believe I testified to that, yes.

Senator MURKOWSKI. When you got a paycheck, was it Madison S&L or was it Madison Financial?

Ms. STRAYHORN. My paycheck was issued at Madison Financial Corporation until such time as, after Mr. McDougal left in July and I was persuaded to come over to the S&L side, and some period

shortly after that, I was changed to the Madison Guaranty Savings & Loan payroll.

Senator MURKOWSKI. Were you bonded as an employee?

Ms. STRAYHORN. Was I bonded?

Senator MURKOWSKI. Yes. Did the bank bond you or the S&L or Madison Financial?

Ms. STRAYHORN. I didn't operate in a position of authority.

Senator MURKOWSKI. OK, let me ask you, you served McDougal as a personal secretary, is that how you describe your activities?

Ms. STRAYHORN. Define "personal."

Senator MURKOWSKI. In the sense—were you an officer, or did you have any activity associated with the structure of corporation? Were you the secretary of Madison Financial?

Ms. STRAYHORN. Not at that time, no, sir.

Senator MURKOWSKI. Were you at any time?

Ms. STRAYHORN. I was ex officio secretary for the board after I went back to the bank, and—

Senator MURKOWSKI. What timeframe was that, roughly, do you remember what year?

Ms. STRAYHORN. I think the board appointed me secretary, it might be at the end of 1987. At some point.

Senator MURKOWSKI. OK. You were appointed sometime, then, secretary to the board of directors?

Ms. STRAYHORN. It was not an authority status. I took shorthand. It was more or less a—

Senator MURKOWSKI. To your knowledge, was your position one that was approved by any corporate resolution, either by Madison S&L or Madison Financial? You know what I mean, the board meets, they pass a resolution.

Ms. STRAYHORN. You mean when I was recognized as the recording secretary?

Senator MURKOWSKI. What I am attempting to determine here is, you know, the board makes the vice presidents and those actions are part of the corporate minutes, so those people—

Ms. STRAYHORN. Oh, I believe that was when the Madison Guaranty board recognized me as recording secretary, I believe that was made a part of the minutes. It was a board action—

Senator MURKOWSKI. In effect, you were the secretary for the corporation, and had been appointed by the board—in the minutes.

Ms. STRAYHORN. Actually, my role was I recorded the minutes. I don't think I was the corporation's secretary at that time. I think I was an assistant corporate secretary at that time.

Senator MURKOWSKI. It would be helpful if we had some idea whether you had been appointed at any time, either by Madison S&L or Madison Financial, as a corporate officer, in any reference to the board taking an action to appoint you.

Ms. STRAYHORN. I was not—like I say, I believe I may have been assistant secretary at some period for Madison Guaranty after I went to work for them.

Senator MURKOWSKI. All right. Let me move on then. Did you know a gentleman by the name of Fitzhugh who testified the other day here? He was a vice president.

Ms. STRAYHORN. Davis, yes.

Senator MURKOWSKI. What did he do for Madison Financial? He had the title of vice president, which he acknowledged.

Ms. STRAYHORN. Madison Financial?

Senator MURKOWSKI. It is my recollection he was vice president of Madison Financial.

Ms. STRAYHORN. I was never clear on Fitzhugh's role——

Senator MURKOWSKI. Did he work with you in the same office and keep regular hours or—he was a lawyer, as I recall?

Ms. STRAYHORN. I don't think he functioned in a lawyer's status at all. I think he was more of a real estate-type person, and he worked on a couple of——

Senator MURKOWSKI. He worked——

Ms. STRAYHORN [continuing]. Projects in some capacity, but I am not exactly sure——

Senator MURKOWSKI. And you don't remember what projects he work on?

Ms. STRAYHORN. I was familiar with him and I did some secretarial support. I hate to say, but I believe he was looking at some downtown property that was for sale.

Senator MURKOWSKI. Why do you hate to say it?

Ms. STRAYHORN. Because I don't remember, but——

Senator MURKOWSKI. So you really don't know what he did, other than he was a vice president. How many people worked for the Madison Financial?

Ms. STRAYHORN. At the time I went to work?

Senator MURKOWSKI. Yes, when you and Fitzhugh were there.

Ms. STRAYHORN. Well, it was——

Senator MURKOWSKI. 10, 20?

Ms. STRAYHORN. Are you talking about contractors or——

Senator MURKOWSKI. People whose pay said Madison Financial on the paycheck.

Ms. STRAYHORN. Let me think about that.

Senator MURKOWSKI. As opposed to those who were in Madison Guaranty S&L.

Ms. STRAYHORN. I can't remember a number and I am not real certain who was working as a contractor capacity and who was working on a salaried capacity. I wouldn't want to speculate because I was not always aware of their role and their compensation arrangement.

Senator MURKOWSKI. Was it 20 people working or 50 or 10? I am trying to get a feel.

Ms. STRAYHORN. It was a minimal number. I would say 10 to 15 people at the most.

Senator MURKOWSKI. As a vice president you would assume Mr. Fitzhugh was doing something visible. I haven't been able to determine from his testimony what. Do you know if he made loans? Did he go to the loan committee meetings?

Ms. STRAYHORN. Mr. Fitzhugh worked for the financial corporation until such time he worked for the savings and loan. I was not aware he was ever involved in the loan committee actions or making any loans.

Senator MURKOWSKI. Thank you. I am going to refer to your deposition given in April 1984. On line 5, you quoted:

But Jim had always told me, you know, these people and his good old boy buddies that had known him after—known him all their life and he had never heard of them, were calling up saying . . .

Then further you state:

He gave me this crash course on FSLIC regulations, that the savings and loan could only invest up to 6 percent and until they got more assets, he couldn't buy any more land. But we know that he bought more land and got Seth Ward and bought the northern portion of the IDC and McDougal bought the southern portion.

Recognizing your statement, when you were asked if Seth Ward was used as a way to get around the regulation, you stated yes?

Ms. STRAYHORN. Well, that's only my perception. I realize it was a circumvention of regulations, but I didn't know how that applied to the law.

Senator MURKOWSKI. You didn't know that was a violation of the law?

Ms. STRAYHORN. No. In fact, I wasn't aware of a lot of the regulations that I was—

Senator MURKOWSKI. I am not going to dwell on the 6 percent. Other than you obviously had some knowledge that there was a regulation that suggested that 6 percent of the net worth was the maximum. When it was evident that they had gone ahead and purchased the northern portion of IDC, that would be Seth, and McDougal took the southern portion, they were certainly circumventing what you knew as a regulation, which, of course, turns out to be a violation of law?

Ms. STRAYHORN. Yes, that was my perception.

Senator MURKOWSKI. Did you feel uneasy about knowing that at least it was in violation of what you assumed was a regulation, because when he says what he said, or you say he said, "he gave me this crash course on FSLIC regulations" that savings and loans could only invest until they got more assets, he couldn't buy any more land, and then went out and did it. Did you feel a little uneasy?

Ms. STRAYHORN. I wasn't in a position to be uneasy. It was not my decision, no.

Senator MURKOWSKI. Well, his intent, it is obvious.

You have already been asked relative to whether you have any recollection of any catch-up work being done to get affairs in order prior to the examination. I think you indicated some people worked late, but you didn't have to work on weekends and so forth. You were in charge of maintaining files and keeping a documentation, insurance current, taxes paid, so forth?

Ms. STRAYHORN. Me?

Senator MURKOWSKI. Yes.

Ms. STRAYHORN. No.

Senator MURKOWSKI. I thought you had a function keeping files.

Ms. STRAYHORN. I didn't have a function in the loan department.

Senator MURKOWSKI. What was your function, if you would describe it, very briefly?

Ms. STRAYHORN. When?

Senator MURKOWSKI. When you worked with Jim McDougal.

Ms. STRAYHORN. I think I've testified that I was secretary. I wore a lot of hats, I did a lot of things—

Senator MURKOWSKI. You said you did the shorthand so you took letters and so forth?

Ms. STRAYHORN. Yes.

Senator MURKOWSKI. My final question, did you cut paychecks?

Ms. STRAYHORN. No, sir.

Senator MURKOWSKI. You did not handle the payroll?

Ms. STRAYHORN. That was done in accounting.

Senator MURKOWSKI. Mr. Chairman, in conclusion the Senator from California made an extended statement relative to the cause of the S&L debacle, and I think the record needs to be examined with factual reality. The responsibility, to a large degree, was due to the U.S. Congress for the S&L debacle. To suggest it is appropriate to point the finger at any one Administration or any one President is, in my opinion, totally void of reality.

I know something about the finance business. I know something about the banking business and the savings and loan, mutual savings business. We deregulated the industry, and it all began about 1980 when we increased the insurance from \$40,000 per individual depositor to \$100,000, that was done primarily through the efforts of a couple of Members who are no longer with this body.

There were no hearings held in the Senate. The Federal Government increased their exposure dramatically by this insurance increase from \$40,000 to \$100,000. The deregulation of the S&L's was their downfall for the reason that the S&Ls, for an extended period of time, did a tremendous service to prospective homeowners and young buyers in this country by being able to meet their demands for home ownership. They had long-term loans at low fixed interest rates.

During that time, the S&Ls always enjoyed a higher rate that they could pay for passbook savings—we all had a little savings account, our kids had a savings account, and so forth higher than the commercial banks.

They enjoyed, if you will, the protection under the law of being able to pay more than the commercial banks, and the consequence for their ability to provide long term mortgages to the public. Deregulation simply put them out of business. As a consequence, when they had to pay the same rate that the commercial banks were paying for this savings, the commercial banks didn't hold long-term mortgages at fixed rates. The S&L's did.

They could not adjust their mortgage portfolio. They moved out in all kinds of businesses, they offered checking accounts. Their management expertise was not geared up to compete, if you will, in an unregulated market. As a consequence, they begin to fail virtually overnight, and unfortunately, some unscrupulous, people moved in. We've seen the evidence in many areas.

Let's make sure the record reflects reality, and suggest that the examiners have somehow been irresponsible in the process of moving along an institution that clearly was under scrutiny, and had been notified to set up a procedure for correction. That process continues, but you can't stay ahead of people who are out to scam the system by setting up straw men until, in most cases, it is too late.

Let us put the blame where it belongs. It belongs right here in the U.S. Congress where we initiated that movement from \$40,000 to \$100,000 on the insurance and deregulated an industry that

simply lost its competitive advantage. It was all over, and anybody who has been a student of the financial community will tell you why it happened and where Congress was—well, history bears that out and now we are paying for it.

Thank you, Mr. Chairman. Thank you, madam, and I wish you a good day.

Ms. STRAYHORN. Thank you.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator SARBANES. Mr. Chairman, we will stay on your side. I take it we are trying to conclude here.

The CHAIRMAN. Yes, I think if we can, in fairness to the witness and to the Members, and I thank you, Senator.

Mr. Chertoff.

Mr. CHERTOFF. Ms. Strayhorn, I have one last thing to ask you. I would like to make sure you have a copy of the January 25, 1990, letter you wrote to April Breslaw on Madison Guaranty stationery. Maybe we could stop for a moment and let the witness read the letter because I will ask some questions about it, and she should have an opportunity to look at it first.

[Pause.]

Mr. CHERTOFF. Do you recognize the letter?

Ms. STRAYHORN. Yes, sir.

Mr. CHERTOFF. I take it you wrote the letter?

Ms. STRAYHORN. Yes, sir.

Mr. CHERTOFF. Just to set the stage, as of 1990, the case, *Ward v. Madison* which we talked about earlier, that case in State court, Mr. Ward won the original case; correct?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. Your letter makes reference to this, didn't the RTC try to get a new trial or reopen the matter of this commission?

Ms. STRAYHORN. I'm not sure if they requested a new trial or if they just went to the Court of Appeals.

Mr. CHERTOFF. There was a second case where the Rose Law Firm was hired by the RTC to sue the Frost accounting firm regarding an audit. With that in mind—I want to take you through the letter. This is you writing to Ms. Breslaw. Ms. Breslaw was the attorney at the FDIC responsible for the institution?

Ms. STRAYHORN. No, sir.

Mr. CHERTOFF. She was responsible for the Frost case?

Ms. STRAYHORN. That's correct.

Mr. CHERTOFF. You wrote her a letter, you said:

It has been reported to me that during my absence from the office the Rose Law Firm requested a copy of the Borod & Huggins report, commissioned by Madison's board of directors to the law firm of Borod & Huggins, retained to investigate the operations of Madison Guaranty and Madison Financial Corporation.

What was the Borod & Huggins report?

Ms. STRAYHORN. Just what I've said. Actually, I believe it may have been required by the cease and desist order, that the savings and loan commission, a preliminary investigation into the events at Madison Guaranty and Madison Financial Corporation.

Mr. CHERTOFF. Including these transactions involving the IDC?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. Then you say:

There is reluctance in releasing this report based on the following circumstances.

You say there is an attorney-client privilege issue. Can you explain what you meant—talking about the Borod & Huggins report:

A large portion of the report is dedicated to a summary of the acquisition of property, transactions surrounding the sale of that property, profits claimed by the service corporation in the sales of certain acquisitions and the compensation arrangement for Seth Ward. A major portion of this report is directly related to a lawsuit by Seth Ward, in which he obtained a \$400,000 judgment against Madison Guaranty and Madison Financial Corporation.

Does that refer to *Ward v. Madison* you testified about earlier?

Ms. STRAYHORN. Yes, sir.

Mr. CHERTOFF. Quoting:

Madison Guaranty is attempting to obtain a new trial in Federal court and plans to file a new motion in Federal court to recover \$400,000 escrowed judgment funds obtained by the father-in-law of Webb Hubbell.

That's Seth Ward, right?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. Quoting:

Who was associated with the Rose Law Firm and who was the lead attorney in the referenced suit by Madison.

Am I correct in understanding that at this point, Madison Guaranty, which was being supervised by the RTC, was trying to recover this \$400,000, that Ward had won in the State court?

Ms. STRAYHORN. That's correct.

Mr. CHERTOFF. Do you know on what basis they were asking for a new trial?

Ms. STRAYHORN. No, I don't recall that. That particular case was in several phases, so I can't recall all the specifics. In fact, it was still in some stage of court when I left Madison.

Mr. CHERTOFF. Do you remember anything about the grounds or the reasons why the RTC was claiming that they had a right to recover the \$400,000 that Ward had won in the State?

Ms. STRAYHORN. Well, the \$400,000 was a bond that was posted in State court, pending an appeal. During that time, and this is just from my memory, the suit was removed by the RTC or FDIC—I can't remember, RTC I believe—to Federal court, that bond was released to Mr. Ward, on a technicality.

Mr. CHERTOFF. But putting aside the bond, your understanding at this point was they were trying to reopen that \$400,000 State court judgment and get some of that money back from Mr. Ward; is that right?

Ms. STRAYHORN. Well, basically, yes, I think.

Mr. CHERTOFF. Then you go on the next page:

The Borod & Huggins Report is only a general, preliminary investigative report compiled from investigation and voluntary interviews of persons without benefit of oath. The investigation was primarily conducted by the attorney retained for the drafting, filing, and preliminary discovery in the Frost audit suit. The Gerrish firm's work papers transferred . . .

What was the Gerrish firm doing?

Ms. STRAYHORN. Actually, the Gerrish & McCrary firm was two of the attorneys that had formerly practiced under the Borod & Huggins firm.

Mr. CHERTOFF. Quoting:

The Gerrish firm's work papers transferred to the Rose Law Firm would have more specific findings relating to the Frost audits at Madison than would be revealed in the investigative report.

Based on the aforementioned reasons, it is my unqualified belief that release of this report to the Rose Law Firm would not have any positive impact on Madison's recovery in the Frost suit, and may, in fact, adversely affect Madison Guaranty's interests in other litigation.

That "other litigation" refers to the continuing case against Mr. Ward?

Ms. STRAYHORN. Yes.

Mr. CHERTOFF. Could you explain to us why it is that you felt that you didn't want to have the Rose Law Firm to have the Borod & Huggins report relating to this preliminary investigation of this series of transactions, and why you felt that having the Rose Law Firm get possession of that report could adversely affect Madison Guaranty's interests in the word litigation?

Ms. STRAYHORN. I think that is fairly obvious, you know, the close relationship between the lead attorney in the Frost audit suit and Mr. Ward himself.

Mr. CHERTOFF. The lead attorney in the Frost audit was who?

Ms. STRAYHORN. Webb Hubbell.

Mr. CHERTOFF. Did Ms. Breslaw get back to you in any way or anyone else on her behalf get back to you regarding this letter?

Ms. STRAYHORN. She did not talk to me personally. I believe she may have discussed this with members of the RTC.

Mr. CHERTOFF. What was the result?

Ms. STRAYHORN. I think it was her decision that the Frost audit suit would be tried outside of the institution.

Mr. CHERTOFF. What was the decision with respect to whether the Borod & Huggins report would be turned over to the Rose Law Firm?

Ms. STRAYHORN. Apparently it was disregarded.

Mr. CHERTOFF. When you say "it was disregarded," you mean your request was disregarded?

Ms. STRAYHORN. I believe so.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. I would like to follow up, thank you. First of all, with respect to the appeal that was pending in connection with the attempt to recover the \$400,000 which had been awarded by judgment to Mr. Ward, what was the ultimate result?

Ms. STRAYHORN. The ultimate result was, and my last knowledge of that, it was still pending at the time I left Madison.

Mr. BEN-VENISTE. Were you advised that the matter was settled and substantially all that money was covered?

Ms. STRAYHORN. I did speak with one of the attorneys at some point when he told me it had been resolved and they had recovered the \$400,000.

Mr. BEN-VENISTE. OK, that part of it was resolved. With respect to your putting Ms. Breslaw on notice that you saw this possible conflict, had anybody from the Rose Firm, to your knowledge, been clamoring to get this Borod & Huggins report or were you simply alerting Ms. Breslaw to the possibility that this might constitute a problem, if it were turned over?

Ms. STRAYHORN. I believe the substance of the letter was, and I think this may not have been the first letter, I was—it was apparent to me that Ms. Breslaw wasn't aware of certain relationships

and other litigation that was going on in the receivership, I believe, at the time.

I felt that it was my duty to put her on notice of certain relationships and stances our "assigned" attorneys were working under. She was working outside of that realm of the RTC staff attorneys.

Mr. BEN-VENISTE. Did you draft this letter on your own, the one in front of you, or did someone help you with that?

Ms. STRAYHORN. No, this was mine.

Mr. BEN-VENISTE. You put her on notice, and my question was, had it come to your attention that anyone from the Rose Firm had specifically solicited the Borod & Huggins report, or was trying to get ahold of it? Or was it the case that you were trying to be cautious to make sure that it wasn't inadvertently turned over?

Ms. STRAYHORN. Well, apparently someone had requested a copy of that report. I can't remember if it had actually been delivered to them—maybe I just wanted her to be aware of this stance that the RTC had taken on this report on previous occasions.

Mr. BEN-VENISTE. Let me see if I can help you. We have your statement prepared on April 11, 1994, to the RTC. I guess this is an affidavit signed by you. Do you have that in front of you?

Ms. STRAYHORN. No, I believe what I have is—

Mr. BEN-VENISTE. Let me make sure that you have it.

Ms. STRAYHORN [continuing]. The law firm's?

Mr. BEN-VENISTE. Do you have that, Ms. Strayhorn?

Ms. STRAYHORN. Yes, sir, the RTC—

Mr. BEN-VENISTE. If you turn to the last page of the affidavit, which would be page 5.

Ms. STRAYHORN. Yes, sir.

Mr. BEN-VENISTE. There it says: "I have also been shown a letter I wrote to April Breslaw dated January 25, 1990." That would be the letter that you have been referring to here today?

Ms. STRAYHORN. The previous letter, yes, I believe there was a previous letter.

Mr. BEN-VENISTE. "This letter"—

Ms. STRAYHORN. Yes.

Mr. BEN-VENISTE. Quoting:

This letter addressed my concern with releasing the Borod & Huggins investigative report to the Rose Law Firm. I do not recall if the report was ever released to the Rose Law Firm. I would have no knowledge of any information involving the Seth Ward case being communicated to Webb Hubbell.

Is that your recollection today?

Ms. STRAYHORN. Yes. If I signed an affidavit.

Mr. BEN-VENISTE. Did you sign it? It has a signature there.

Ms. STRAYHORN. That's me.

Mr. BEN-VENISTE. I am not sure—your copy doesn't have a signature?

Ms. STRAYHORN. Yes, that's my signature.

Mr. BEN-VENISTE. OK, my question is whether that is consistent with your recollection today, your affidavit back in 1994?

Ms. STRAYHORN. I would rely on this information, yes, but isn't this basically what I have just said?

Mr. BEN-VENISTE. I wanted to clarify, to put a period at the end of the paragraph that was coming along here. First, that the \$400,000 was recovered by Madison or its successor in interest,

from Mr. Ward. Second, that you had no reason to believe that the Borod & Huggins report was ever turned over to the Rose Law Firm, and more particularly, that Webb Hubbell ever saw that report. That's all.

Ms. STRAYHORN. OK.

Mr. CHERTOFF. Ms. Strayhorn, I have the the January 25th letter, in which you object to the release of the report. It says—there is handwriting in the upper right-hand corner of the first page. Do you recognize the handwriting?

Ms. STRAYHORN. That's mine.

Mr. CHERTOFF. What does it say?

Ms. STRAYHORN. It says "reviewed by Don Cypert before mailing 1/29/90" and my initials.

Mr. CHERTOFF. Who was Don Cypert?

Ms. STRAYHORN. Donald Cypert was the specialist in charge for the RTC that was assigned to our institution.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I have no questions. I have a couple of observations I want to make, but—

The CHAIRMAN. Ms. Strayhorn, we want to thank you for coming in and giving us the testimony that you did. We certainly hope that things in the future go smoother, rather than rougher. I know that you are anticipating certain things later, but we want to commend you. I think I speak for both sides in saying that you have been one of those witnesses who has attempted to spell out things as she recalls them to the best of your ability. We are deeply appreciative of your cooperation.

Ms. STRAYHORN. Well, I do want you to know that I do appreciate your consideration and the care that your staff has given me. Thank you.

The CHAIRMAN. Thank you, Ms. Strayhorn.

Senator SARBANES. Mr. Chairman, I think there is a need for the two staffers to get together promptly and work on a deposition schedule with respect to witnesses. We have one but it is very truncated, and it seemed to me that—in fact, I had a discussion with staff about a list of witnesses and then which ones of them we thought we would need to depose. Some of them have done extensive testimony, as had Ms. Strayhorn.

If we could have a full scale meeting, I would be happy to participate in it if the Chairman deems it advisable. Hopefully we might work out a deposition schedule so we have a clear idea of how we are proceeding, which witnesses were to be deposed, and when those depositions might be arranged.

The CHAIRMAN. I will ask the Majority staff to get together with the Minority. Hopefully, after we adjourn, the two sides can meet and work out scheduling for the future witnesses.

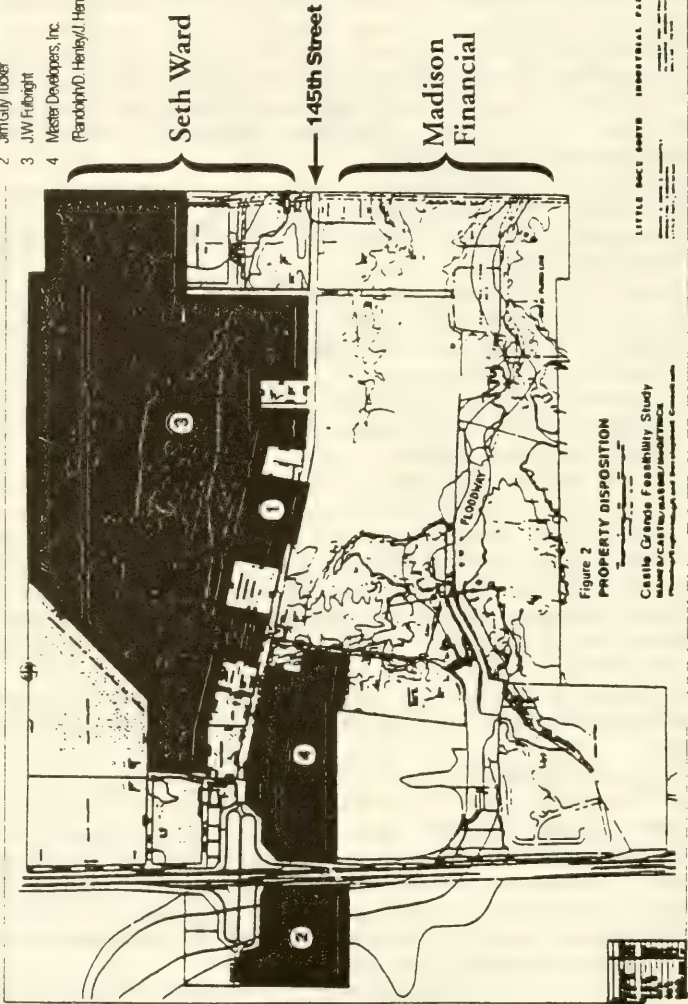
We stand in adjournment until 10 a.m. Tuesday morning.

[Whereupon, at 1:35 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Tuesday, February 6, 1996.]

[Appendix supplied for the record follows:]

KEY

- 1 Davis Fitzhugh - Law Strauss Building
- 2 Jim Gray/Tucker
- 3 J.W. Furbright
- 4 Master Developers, Inc.
(Randolph D. Henley/J. Henley)



September 24, 1985

M. Jim McDougal, President
 Madison Financial Corporation
 16th and Main
 Little Rock, Arkansas 72201

Dear Jim:

This letter is to set forth our agreement concerning the property commonly referred to as all the land owned by the Industrial Development Company of Little Rock.

On or about the 11th day of September, 1985, Madison Guaranty Savings and Loan Association agreed to acquire all of Industrial Development Company of Little Rock's property except the Timex Building. In the agreement, Madison has the right to assign its rights to that agreement to any entity or individual. As part of the agreement, I have agreed to take title to all of the assets and property north of 145th Street, the water and sewer improvements, and the water and sewage treatment ponds south of 145th Street. Madison Guaranty Savings and Loan Association will agree to lend me on a non-recourse basis the purchase price secured only by a mortgage of those parcels and the water and sewerage.

Madison Guaranty will have an option for at least 270 days to purchase the property from me at any time for the amount of the note paid and interest thereon. It is the intention of both Madison and myself to attempt to develop all of the property acquired from I.D.C., and sell it as quickly as possible. If there is any purchase of the property or any portion thereof during the 270 day period, the sale price will be mutually approved by me and Madison Financial Corporation. The proceeds of any sale will be applied toward the promissory note, less a ten percent commission to be paid to me if the property is sold by me, or at Madison's discretion, the particular piece of property may be decided back to Madison prior to the execution of the sales transaction. If it is sold by anyone else, then the proceeds will go to Madison Guaranty, less the commission to the other seller, and a four percent commission to me.

It is also agreed, in addition to the salary I am receiving from Madison Guaranty, on all property acquired from I.D.C. sold either by me or by Madison Guaranty after the exercise of Madison's option, or on that portion of the property already acquired by Madison from I.D.C., I shall receive a ten percent commission on said sale if it is sold by me, and four percent commission if it is sold by anyone else.



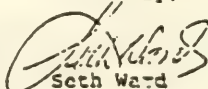
SWL-008

Page -2-
Mr. Jim McDougal
September 24, 1985

During the term of the option period, all of the net revenues of the waterworks and sewer department shall be forwarded directly to Madison Guaranty for application toward the note.


I would appreciate your acknowledging and agreeing to the terms of this letter agreement.

Sincerely,


Seth Ward

SJS:ss

Acknowledged and accepted.



(Jim McDougal, President
Madison Financial Corporation

SW1-009

Seth Ward
48 River Ridge
Little Rock, Arkansas 72207

September 24, 1985

Mr. James B. McDougal, President
Madison Financial Corporation
16th and Main Streets
Little Rock, Arkansas 72201

Dear Mr. McDougal:

This is to set forth our agreement concerning the property commonly referred to as all the land owned by the Industrial Development Company of Little Rock and certain improvements thereon.

On or about the 13th day of September, 1985, Madison Guaranty Savings and Loan Association agreed to acquire all of the Industrial Development Company of Little Rock's property except the grounds and building commonly referred to as the Timex Building. In the agreement Madison has the right to assign its rights to any entity or individual. As part of our agreement, I have agreed to take title to all of the assets of the aforementioned property that is located immediately north of 145th Street, the water and sewer improvements, and the sewer treatment ponds, including the one located south of 145th Street. Madison Guaranty Savings and Loan Association will agree to lend me the purchase price for this property secured by a mortgage of those parcels and the sewer and water works. Madison Guaranty will pay \$35,000.00 to me to have an option for at least 270 days from the date of acquisition to purchase the property from me at any time, in whole or in part, for at least the pro rata amount of the note plus all accrued interest; except one parcel described as follows:

PLAINTIFF'S
EXHIBIT

4

87-7590

Approximately 22 1/2 acres located and referred to as the Northeast Quadrant of the Interchange of Highway 65 and 145th Street. More specifically described in the attached legal description which is a part of this agreement.

It is the intention of both Madison and myself to attempt to develop all the property acquired from I.D.C. and sell it as quickly as possible. If the property or any portion thereof is sold during the 270 day period, the sale price will be mutually approved by me and Madison Financial Corporation. The proceeds of the sale will be applied toward the promissory note, less a 10% sales commission to be paid to me. At Madison's discretion,

SW1-005

Mr. James G. McDougal
September 24, 1985
Page -2-

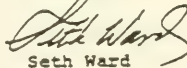
any particular piece of property may be deeded back to Madison prior to the execution of a sales transaction.

It is also agreed, in addition to the salary I am receiving from Madison Financial Corporation, I will receive 10% sales commission on all property sold, regardless who sells it, except residential property that will be located south of 145th Street, in which case I will receive 4% commission if sold by any other person.

During the term of the option period, all of the net revenues of the water works and sewer department shall be forwarded directly to Madison Guaranty for application toward the note, unless such facilities are sold sooner. Madison Financial Corporation will also be responsible for all taxes, special assessments, dues, insurance premiums, etc. during the period of this option.

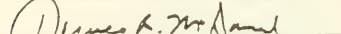
I would appreciate your acknowledging and agreeing to the terms of the letter of agreement.

Sincerely,



Seth Ward

Acknowledged and accepted:


James B. McDougal, President
Madison Financial Corporation

Addendum to Agreement Between
Seth Ward and James B. McDougal
September 24, 1965

(Little Rock South Industrial Park, NE Corner 65-167 & 145th)

LEGAL DESCRIPTION -

Part of Tracts 27 & 28, Holman Acres, Pulaski County, Arkansas, more particularly described as: Starting at the intersection of the north right-of-way line East 145th Street and the west right-of-way line of Dineen Drive, said point also being the Southeast corner of the Birch-Brooks, Inc. property; thence N 0 deg. 21 min. E along the west right-of-way of Dineen Drive 373.12 ft. to the Northeast corner of said Birch-Brooks, Inc. property and the point of beginning; thence N 89 deg. 50 min. 30 sec. W, along the north line of said Birch-Brooks, Inc. property 303.50 ft. to the Northwest corner thereof, thence S 0 deg. 05 min. 30 sec. W along the west line of said Birch-Brooks, Inc. property 255.25 ft. to a point on the north right-of-way line of U. S. Highway No. 65-167; thence N 23 deg. 33 min. 10 sec. W, along said north right-of-way line, 111.57 ft. to a point; thence N 89 deg. 39 min. 40 sec. W and continuing along said north right-of-way line, 650.87 ft. to a point; thence N 54 deg. 01 min. 20 sec. W and continuing along said north right-of-way line 111.29 ft. to a point on the east right-of-way line of said U. S. Highway No. 65-167; thence N 2 deg. 29 min. 48 sec. W along said east right-of-way line 825.61 ft. to a point; thence S 89 deg. 55 min. E along the south property line of the Seimens-Allis, Inc. property and said south line extended Westerly, 1191.02 ft. to a point on the west right-of-way line of Dineen Drive; thence S 0 Deg. 21 min. W along said west right-of-way line 310.35 ft. to a point; thence Southwesterly and continuing along said west right-of-way line, being the arc of a 715.66 ft. radius curve to the right, having a chord bearing and distance of S 8 deg. 21 min. W, 199.20 ft. to a point; thence S 16 deg. 21 min. W and continuing along said west right-of-way line, 20.0 ft. to a point; thence Southwesterly and continuing along said west right-of-way line, being the arc of a 715.79 ft. radius curve to the left having a chord bearing and distance of S 8 deg. 21 min. W, 199.23 ft. to a point; thence S 0 deg. 21 min. W and continuing along said west right-of-way line, 25.88 ft. to the point of beginning, containing 22.5649 acres more or less.

SW1-007

OFFICIAL RECORD OF INTERVIEW
OFFICE OF INVESTIGATIONS
OFFICE OF INSPECTOR GENERAL

CASE NUMBER: 1094-096

PARTICIPANTS: Martha Patton, Former Secretary to Webster Hubbell, Rose Law Firm
 Karen Hepburn, Senior Special Agent, OIG, FDIC
 Ed Slagle, Special Agent, OIG, RTC

DATE/TIME/LOCATION: 12-8-94/1:00 p.m./Little Rock, AR

INTERVIEW CONDUCTED: In Person X By Phone

PURPOSE: To obtain information regarding her responsibilities as Webster Hubbell's secretary.

RESULTS:

Ms. Patton was interviewed and stated substantially as follows:

She was a secretary in the Litigation Section of the Rose Law Firm (Rose) for approximately six to eight years. She left Rose on December 31, 1986, to accept a job with Judge Thomas Glaze, Arkansas Supreme Court. While at Rose, she was primarily a secretary to Webster Hubbell and Jerry Jones. Her duties included typing, answering the phone and keeping Mr. Hubbell's appointment calendar. She would type letters and memorandums that Mr. Hubbell had dictated for her. While at Rose, she was not responsible for completing conflicts checks or for preparing fee bills.

She recalls that Seth Ward was one of Mr. Hubbell's clients. Mr. Ward had many businesses over the years that Mr. Hubbell did legal work for. She recalls that Mr. Ward had a Datsun dealership, a company that involved school buses and P.O.M., Inc., which was a company the Mr. Ward purchased that related to parking meters. She also recalls that Mr. Hubbell represented Mr. Ward on matters related to ~~Madison Guaranty Savings~~ and Loan Association (Madison), although she could not recall any specific issues related to Madison.

Prepared by: Karen S. Hepburn Date: 12-15-94

Concurred by: E. Ed Slagle Date: 12-15-94

Results Continued

Ms. Patton was shown a copy of a letter dated December 11, 1986, from Webb Hubbell to H. Don Denton, Senior Vice President, Madison (See Attachment 1). The letter is not on Rose letterhead, rather, it has Seth Ward's name and address at the top. Ms. Patton stated that she could not recall typing this specific letter but that she believed she did because it has her initials at the bottom. She further believes she typed the letter because the type resembles the IBM typewriter that she had while at Rosa.

Ms. Patton was shown a copy of a letter dated September 24, 1985, from Seth Ward to James McDougall, President, Madison Financial Corporation (See Attachment 2). The letter is not on Rose letterhead, rather, it has Mr. Ward's name and address at the top. Ms. Patton stated that she could not recall typing this specific letter either but that she believed she did because the type is similar to the IBM typewriter and the second page is formatted in the style she used while a Rosa secretary. She further stated that both letters appear to be her style of typing.

She said that she had no knowledge of the issues the letters dealt with because she did not pay much attention to what she was typing other than to make sure she typed it correctly.

1 promissory note from Seth Ward to Madison Guaranty Savings &
2 Loan.

3 THE COURT: And what's the exhibit number?

4 MS. BARTLEY: Exhibit number is Defendant's
5 Exhibit 1.

6 THE COURT: We will let that be admitted.

7 (Thereupon, Defendant's Exhibit 1 was identified
8 for the record and received into evidence.)

9 MS. BARTLEY: Your Honor, I have the original of
10 that note, but I would like to substitute a copy for court
11 purposes.

12 THE COURT: That will be fine.

13 Q. (By Ms. Bartley) Mr. Latham, can you identify
14 Defendant's Exhibit 1?

15 A. Yes.

16 Q. Is that a promissory note that Mr. Ward gave to Madison
17 Guaranty?

18 A. Yes, it is, in March of '86.

19 MS. BARTLEY: Your Honor, I offer Defendant's
20 Exhibit 1.

21 THE COURT: We've admitted it.

22 Q. (By Ms. Bartley) Now, can you tell the jury what you
23 recall of the circumstances surrounding Mr. Ward borrowing
24 \$400,000 from Madison Guaranty?

25 A. At that time Mr. Ward was needing about \$400,000 in cash

1 for some personal reasons. The service corporation was not in
2 a position at that time, if I remember correctly, to pay him
3 the \$300,000 or so that was owed in commissions. The savings
4 and loan loaned Seth the money secured by a mortgage on tracts
5 27 and 28 of Holman Acres.

6 Q. I have shown you what's already been introduced as
7 Plaintiff's Exhibit 19, a \$300,000 promissory note from Madison
8 Financial Corporation to Seth Ward dated about a week later,
9 April 7th, 1986. What can you tell the jury about the
10 circumstances surrounding the making of that note?

11 A. It was discovered at that time -- I believe Seth brought
12 it to our attention -- that it was not documented anywhere that
13 the service corporation, Madison Financial, owed Seth the
14 \$300,000 for commissions. Seth was concerned, and rightly so,
15 that should something happen to the people that, you know, were
16 cognizant of this, there would be no documentation. Seth would
17 not be able to prove that that corporation owed him some money.
18 We structured this note as evidence of that debt.

19 Q. Did any money actually change hands?

20 A. No. The consideration in essence was already given.
21 The money was already owed to Seth as commissions. Seth did
22 not pay cash to the service corporation for this. This was
23 evidence of a debt that was already owed by the service
24 corporation to Seth.

25 Q. Now, was Mr. Ward concerned also because there were

1 federal examiners at Madison Guaranty Savings & Loan?

2 A. I think that may have been of some concern to him as
3 well.

4 Q. I want you to look at now what's been introduced as
5 Defendant's Exhibit J, an option to purchase tracts 27 and 28
6 of Holman Acres. Can you tell the jury about the circumstances
7 surrounding the financial corporation taking an option out on
8 this property?

9 A. Yes. I know this is confusing, but the loan was done
10 really at that time in lieu of the option. The option more
11 concretely or more accurately reflects the nature of the
12 transaction, that being that the service corporation owed Seth
13 \$300,000 in commissions. In the initial purchase of all of
14 that property, Seth retained tracts 27 and 28 of Holman Acres
15 as his commission, which was later to be bought by the service
16 corporation. The option allows the service corporation to buy
17 the property from Seth, thus Seth receives the \$300,000, and
18 the service corporation would have the property.

19 The note was done very quickly to make sure that that
20 debt was evidenced should something happen to anybody to
21 protect Seth. The note, however, would have left, if that was
22 the way it was finally structured, would have left Seth with
23 the \$300,000 plus the property, which was not the intent of the
24 transaction.

25 MR. JENNINGS: If the Court please, we object to

1 that statement as being intent to vary the terms of the written
2 agreement by oral testimony.

3 THE COURT: Objection be denied.

4 Q. (By Ms. Bartley) Mr. Latham --

5 MR. JENNINGS: May I ask this witness what's the
6 source of his information?

7 THE COURT: I'll let you cross him.

8 MR. JENNINGS: You mean later?

9 THE COURT: After while.

10 Q. (By Ms. Bartley) Now, you've testified that the note
11 was to evidence -- the note given by MFC to Ward was evidence
12 of \$300,000; the option was to effectuate the intent, which was
13 to purchase tracts 27 and 28 from Mr. Ward for \$300,000. Then
14 Mr. Ward would have the money, and Madison Financial
15 Corporation would have the land; is that correct?

16 A. Yes, that's correct.

17 Q. Now, the option is in the amount of \$400,000. Do you
18 know why it's taken for 400,000?

19 A. No, other than when it was drawn up it may have been to
20 offset the note, which was also for \$400,000. I believe at the
21 time the balance on the note was 300,000, that 100,000 had been
22 paid off, the 300,000 remaining being -- what I remember as
23 being the amount of the commissions. That would be the only
24 thing I could think of on the option.

25 Q. Was MFC able to exercise the option and purchase the

1 property after taking it on May 1st, 1986?

2 A. I don't believe it was at that time, no.

3 Q. Let me ask you to look at Defendant's Exhibit 4, dated
4 June 6th, 1986, which has been already introduced and which
5 bears your signature, does it not?

6 A. Yes, it does.

7 Q. Would you tell the jury -- this is a release of Mr. Ward
8 from the obligation to pay the \$400,000 note. Would you tell
9 the jury about the circumstances surrounding this release?

10 A. Yes. Seth at this point in time was concerned because
11 the service corporation at that time was not able to exercise
12 that option and thereby buy the property from them and pay them
13 the \$300,000 in cash. Yet he had a loan to the savings and
14 loan in which he owed money to the savings and loan, secured by
15 that property. He did not want to be in a position where the
16 service corporation could not buy the property and thereby pay
17 him the \$300,000 and yet he have to pay the savings and loan
18 back the \$300,000 that was owed on its note.

19 For that reason we released him from liability, not
20 liability, but we released him from personal liability and set
21 up the savings and loan's only recourse as going against the
22 land itself so that if that case happened, if the service
23 corporation could not pay Seth the \$300,000, then he would --
24 the savings and loan could take the property, and Seth would
25 not have to pay the \$300,000 back to the savings and loan.

1 MR. JENNINGS: If the Court please, we want to
2 show our objection to this testimony with regard to the oral
3 agreements that differ entirely from the written agreement and
4 with regard to the alleged purpose.

5 THE COURT: You are testifying in conclusions
6 there. You might ought to rephrase your questions and not
7 testify in conclusions. Step up here a minute and let me make
8 sure. Step up here, Mr. Jennings, Ms. Bartley.

9 MS. BARTLEY: Excuse me, Your Honor.
10 (Conference at the bench between counsel and the
11 Court.)

12 (Thereupon, the following proceedings continued in
13 open court:)

14 Q. (By Ms. Bartley) Mr. Latham, did you discuss this
15 release with Mr. Ward?

16 A. Yes, I did.

17 Q. And did Mr. Ward understand that this was an offset to
18 his commissions?

19 MR. JENNINGS: If the Court please, we object to
20 that as being a conclusion of the witness.

21 THE COURT: Don't lead your witness, please,
22 ma'am.

23 Q. (By Ms. Bartley) What did Mr. Ward express to you what
24 his understanding was of this release?

25 A. Well, Seth had requested this release because of just

1 what we discussed, that if the service corporation was unable
2 to pay him the \$300,000, he was liable to pay the savings and
3 loan back that \$300,000, the \$300,000 representing his
4 commissions on the initial transaction and the purchase of the
5 property at 145th Street.

6 Q. So did you as representative of the financial
7 corporation offer to offset commissions by this release?

8 A. By the savings and loan, yes.

9 Q. Yes.

10 MR. JENNINGS: If the Court please, we object to
11 that. The savings and loan, according to them, is not a party
12 to the agreement.

13 MS. BARTLEY: Your Honor, it may not be introduced
14 yet. Let me see if I have it back here. Just a moment, Your
15 Honor.

16 Q. (By Ms. Bartley) Mr. Latham, while we are looking for
17 that exhibit, let me hand you what's been introduced as
18 Plaintiff's Exhibit 2 (sic), which is a September 24th letter
19 agreement marked void and Plaintiff's Exhibit 4, another
20 September 24th, 1985 letter agreement. Have you ever seen or
21 did you while you were at Madison Guaranty ever see either one
22 of those letter agreements?

23 A. Yes. I don't know how to differentiate. They are both
24 dated the same date. But exhibit number 4 was one that Seth
25 had brought to my attention around May or June of '86.

- 1 Q. Which one? Is that the one that is not marked void?
- 2 A. Right.
- 3 Q. The one which is not marked void, Plaintiff's Exhibit 4,
- 4 is that the one that Mr. Ward showed you in May or June?
- 5 A. That is correct.
- 6 Q. Before that time had you been aware that Mr. Ward was
- 7 claiming commission on individual pieces of property that were
- 8 sold from the IDC property?
- 9 A. Not until Seth asked me. I think he came to me asking
- 10 for an accounting of the commissions that were owed to them.
- 11 That seems like it was around May or June of '86.
- 12 Q. I hand you what's been introduced as Defendant's Exhibit
- 13 37, which is a memo from Seth Ward returning a \$70,943.47 note.
- 14 Could you tell the jury what you recall about this?
- 15 A. The \$70,000, in discussions I've had with both parties
- 16 here, has turned up several times. I really do not remember
- 17 anything concerning the \$70,000.
- 18 Q. Did Mr. Ward return that note after being released from
- 19 personal liability on the note that's cited in that memo?
- 20 A. I believe he did.
- 21 Q. You stated that Mr. Ward wanted documentation of what
- 22 was owed him back in April of 1986 when Madison Financial
- 23 Corporation gave Mr. Ward the note for \$300,000; is that
- 24 correct?
- 25 A. Correct.

1 Q. Did you find any letter agreement at that time when you
2 were looking for documentation of the \$300,000 in commission?

3 A. No. At that time it appeared that there was not any
4 evidence of the amount that was owed to Seth.

5 Q. In your discussions with Mr. Ward about the May 1st
6 option to purchase Holman Acres, did Mr. Ward tell you about
7 this ~~agreement~~?

8 A. Yes. That was about the time that he was asking for an
9 accounting to find out where he stood under that agreement as
10 far as commissions were concerned.

11 Q. So that was the first time that you learned of the
12 September 24th ~~letter~~ agreement?

13 A. That was the first that I remember of it.

14 MS. BARTLEY: I pass the witness.

15 CROSS-EXAMINATION

16 BY MR. JENNINGS:

17 Q. Mr. Latham, the note executed by Mr. Ward to Madison
18 Guaranty Savings & Loan for \$400,000 was dated March 31, 1986,
19 is it not?

20 A. That's correct.

21 Q. And shortly after that note was executed Mr. Ward paid
22 back \$100,000 of that loan, did he not?

23 A. I believe that's correct.

24 Q. Within a matter of perhaps a week?

25 A. I think that's correct.

1 A. There was another agreement prepared. I don't know if I
2 caused it to be prepared or someone else caused it.

3 Q. Who would the someone else have been?

4 A. It could have been Mr. McDougal.

5 Q. I hand you what's been marked as Plaintiff's Exhibit 4.

6 Do you recognize that?

7 (Thereupon, Plaintiff's Exhibit 4 was identified
8 for the record.)

9 A. Yes, sir, I do.

10 Q. What is that?

11 A. That's the agreement which reflects the agreement that
12 we had agreed to prior to entering the purchase of the IDC
13 property.

14 Q. By whom is that agreement signed?

15 A. It is signed by Mr. McDougal, president, Madison
16 Financial Corporation, and Seth Ward.

17 Q. What is the date on that agreement?

18 A. The date of the agreement is 24th of September 1985.

19 Q. Was it executed on that date?

20 A. No, sir. It was not executed on that date. It replaced
21 the original agreement that was executed on that date.

22 Q. So you dated it back to the date of the agreement that's
23 been introduced as 4 (sic)?

24 A. That's correct, sir.

25 Q. In what respects did this agreement, which is Exhibit 4,

OPTION TO PURCHASE REAL ESTATE

This Option granted this 1st day of May, 1986, by SETH WARD and YVONNE ANNA WARD, his wife (collectively "Grantor"), to MADISON FINANCIAL CORPORATION ("Optionee"),

W-I-T-N-E-S-S-E-T-H:

1. GRANT OF OPTION. In consideration of Optionee's payment to the Grantor of One Thousand Dollars (\$1,000.00), and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor hereby grants to Optionee an exclusive and irrevocable Option to Purchase the following described property together with all buildings and improvements thereon, situated in the City of Little Rock, Pulaski County, Arkansas, to-wit:

A tract of land located in the NE 1/4 SW 1/4 Section 24, T-1-S, R-12-W, Pulaski County, Arkansas, more particularly described as: Starting at an iron pin marking the intersection of the North right-of-way line of East 145th Street and the West right-of-way line of Dineen Drive; thence S89° 44' 40" E along said North right-of-way line, 22.75 ft.; thence Southeasterly and continuing along said North right-of-way line, being the arc of a 2,915 ft. radius curve to the right having an arc distance of 559.07 ft.; thence S78° 45' 20"E and continuing along said North right-of-way line, 2724.44 ft. to the point of beginning of the tract of land described herein; thence N 11° 14' 40" E and perpendicular to said North right-of-way line, 522.72 ft. to a point; thence S78° 45' 20"E and parallel

SW1-070

with said North right-of-way line, 555.56 ft. to a point; thence S11° 14' 40" W and perpendicular to said North right-of-way line 522.72 ft. to a point on said North right-of-way line; thence N78° 45' 20" W along said North right-of-way, 555.56 ft. to the point of beginning, containing 290,402.32 sq. ft. or 6.6667 acres more or less.

2. PURCHASE PRICE. The purchase price for the property hereinabove described, together with all improvements thereon, shall be Four Hundred Thousand Dollars (\$400,000.00).

3. EXPIRATION DATE. This Option shall expire at 6:00 o'clock, P.M., Central Time, on August 1, 1986.

4. FAILURE TO EXERCISE OPTION. If Optionee does not exercise this Option as herein provided, all sums paid by him hereunder shall be retained by the Grantor free of all claims of Optionee, and neither party shall have any further rights or claims against the other.

5. EXERCISE OF OPTION. This Option shall be exercised by Optionee's delivering to the Grantor written notice of such --exercise on or before the expiration date, or any extension thereof, or by Optionee's mailing such written notice of exercise by certified mail to Grantor at least two days before the expiration date, or any extension thereof; and such notice, if so mailed, shall be deemed valid and effective whether or not it actually is delivered to Grantor prior to the expiration date, or any extension thereof.

6. CLOSING REQUIREMENTS. In the event of Optionee's exercise of this Option:

a. Closing will occur within 30 days after the exercise of this Option, which date may be extended by mutual agreement;

b. The Grantor shall deliver at closing to Optionee, or his nominee, a general warranty deed conveying good and marketable title in fee simple to the aforesaid premises, free and clear of all liens, encumbrances and tenancies, except those for streets and utilities and tenancies which may be disclosed by Grantor to Optionee prior to the granting of this Option;

c. Taxes and assessments, if any, due on or before the closing date shall be paid by Grantor. Taxes and assessments, if any, for 1986 shall be prorated as of the closing date;

d. Grantor, at Grantor's sole expense, shall furnish Optionee, within 30 days after exercise of the Option, a complete abstract certified to a current date, or at Grantor's option, a commitment for an owner's title insurance policy convertible at closing to an owner's policy issued on ALTA Form B, 1970, reflecting merchantable title satisfactory to Optionee's attorney. In the event an abstract is furnished and an examination of title to said

property shall disclose that the same is not good and marketable, and if the cause of such unmarketability shall not be removed by Grantor prior to the date fixed for closing, then Grantor may exercise his option to furnish Optionee a policy of title insurance satisfactory to Optionee. If marketable title cannot be conveyed at closing, any monies paid by Optionee on account of the purchase price of said property, including any sums paid as consideration for the granting of this Option, shall be refunded to Optionee;

e. The risk of loss, damage, condemnation, or destruction of the premises or improvements thereon by fire, or otherwise, until closing shall be on Grantor;

f. Revenue stamps to be placed on the Deed shall be at the expense of Grantor.

7. PAYMENT OF PURCHASE PRICE. At closing, Optionee will pay Grantor in cash an amount equal to the purchase price set out in accordance with Paragraph 2 hereof.

8. NOTICES. Any notices required hereunder shall be effective if given to the parties hereto at the following addresses, or such other address as either party may subsequently designate in writing:

OPTIONEE: Madison Financial Corporation
1308 South Main
Little Rock, Arkansas 72201

GRANTOR: Seth Ward
16th & Main
Little Rock, Arkansas 72201

9. ASSIGNMENT. This Option, before or after its exercise, may be assigned by Optionee without the prior written consent of Grantor.

GRANTOR:


Seth Ward

OPTIONEE:

MADISON FINANCIAL CORPORATION

BY: 

SW1-074



MADISON GUARANTY

THE QUAPAW QUARTER

P.O. Box 1583 • 16th & Main Street
Little Rock, Arkansas 72203 • 501-374-7777

January 25, 1990

0000088

Ms. April Breslaw, Attorney
Directors and Officers Liability Section
Federal Deposit Insurance Corporation
550 17th Street, N. W.
Washington, D. C. 20429

*Received by
Don Cypert
before making
1-29-90*

Re: Madison Guaranty vs. Frost Audit Company, et al
USDC No. LR-C-89-0216
Release of Investigative Report - Borod & Huggins

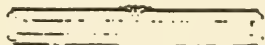
Dear Ms. Breslaw:

It has been reported to me that during my absence from the office, the Rose Law Firm requested a copy of the Borod & Huggins report commissioned by Madison's board of directors to the law firm of Borod & Huggins retained to investigate the operations of Madison Guaranty and Madison Financial Corporation. There is reluctance in releasing this report based on the following circumstances.

One, the report is considered client/attorney privilege and I am sure the conservatorship would not want to waive the right to claim that privilege in litigation.

A large portion of the report is dedicated to a summary of the acquisition of property, transactions surrounding the sale of that property, profits claimed by the service corporation in the sales of certain acquisitions and the compensation arrangement for Seth Ward. A major portion of this report is directly related to a lawsuit by Seth Ward in which he obtained a \$400,000 judgment against Madison Guaranty and Madison Financial Corporation. Madison Guaranty is attempting to obtain a new trial in federal court and plans to file a new motion in federal court to recover \$400,000 escrowed judgment funds obtained by the father-in-law of Webb Hubbell who is associated with the Rose Law Firm and is the lead attorney in the referenced suit by Madison. These escrowed funds (in lieu of supersedeas bond) have been taken by Ward through an error in jurisdiction between the State Court of Appeals and the federal court.

C000022



Page 2 - April Breslaw, Esquire
Frost Audit Suit

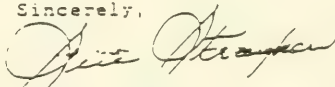
January 27, 1990

The Borod & Huggins Report is only a general, preliminary investigative report compiled from investigation and voluntary interviews by persons without benefit of oath. The investigation was primarily conducted by the attorney retainer for the drafting, filing and preliminary discovery in the Frost Audit suit. The Gerrish firm's work papers transferred to the Rose Law Firm would have more specific findings relating to the Frost audits at Madison than would be revealed in the investigative report.

Based on the aforementioned reasons, it is my unqualified belief that release of this report to the Rose Law Firm would not have any positive impact on Madison's recovery in the Frost suit and may, in fact, adversely effect Madison Guaranty's interests in other litigation. Therefore, I would impose upon your good judgment to instruct the Rose firm to obtain their information through specific requests either directed to me or Lee Sorenson, the investigator assigned to this matter.

Thank you for your consideration in this matter.

Sincerely,



Sue Strayhorn
Legal Officer

/S.C.

cc: Donald Cypert, Managing Agent for
Madison Guaranty Savings and Loan Association
Benita Seliga, RTC Staff Attorney for Madison Guaranty

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, FEBRUARY 6, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Good morning.

Ms. Black and Mr. Switzer, if you have any statements or comments you would like to make, we would be pleased to receive them at this time.

Mr. Switzer, Ms. Black, stand for purposes of taking the oath.

SWORN TESTIMONY OF STEVEN A. SWITZER DEPUTY INSPECTOR GENERAL FOR AUDIT OFFICE OF INSPECTOR GENERAL FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. SWITZER. I have some introductory remarks. My name is Steven A. Switzer, and I am the Deputy Inspector General for Audit in the Office of Inspector General of the Federal Deposit Insurance Corporation. I was the Deputy Inspector General of the Office of Inspector General of the Resolution Trust Corporation until December 31, 1995, when our office was merged into the FDIC Office of Inspector General.

Joining me today is Patricia M. Black, who is the Assistant Inspector General for Inspections and Legal Support and formerly the Counsel to the Inspector General at the Office of Inspector General in the Resolution Trust Corporation.

On August 3, 1995, the RTC Office of Inspector General issued its Report of Investigation Concerning the Rose Law Firm, investigation number WA-94-0016. That report addressed the RTC OIG's investigation into possible conflicts of interest of Rose Law Firm representation in its representation of the Resolution Trust Corporation, including any arising from the Rose Law Firm's representation of the agency in litigation against Frost & Company, formerly the independent auditors for Madison Guaranty Savings & Loan Association.

On January 15, 1996, the Special Committee requested that we review billing records of the Rose Law Firm that were produced to the Special Committee in early January 1996. These records were not available to us during our investigation or prior to the issuance of our report. The Special Committee asked us to evaluate what, if any, effect these records would have on our report.

I would like to emphasize that our review of these billing records and their impact on our report is not yet complete, but we are pleased to answer any questions that the Special Committee may have today with a regard to the results of our review to date.

Thank you.

The CHAIRMAN. Ms. Black, do you have a statement?

**SWORN TESTIMONY OF PATRICIA M. BLACK
ASSISTANT INSPECTOR GENERAL FOR
INSPECTIONS AND LEGAL SUPPORT, FDIC
FORMER COUNSEL TO THE INSPECTOR GENERAL
RESOLUTION TRUST CORPORATION**

Ms. BLACK. No, sir.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Ms. Black and Mr. Switzer, on behalf of the Committee, I would like to thank you for your indulgence yesterday with regard to your depositions, which I believe ended last night at 8 p.m.

Ms. Black, on August 10, 1995, you testified in the House of Representatives with regard to your report that was issued on the Rose conflict issue, isn't that right?

Ms. BLACK. That's right.

Mr. GIUFFRA. The focus of your testimony yesterday and today will be on the Rose billing records which were recently discovered at the White House. You have never given public testimony on those billing records before today, is that right?

Ms. BLACK. That is correct.

Mr. GIUFFRA. Mr. Switzer, you have never testified publicly on the Rose billing records and the significance of those billing records with regard to your conflicts analysis before today?

Mr. SWITZER. No, I have not.

Mr. GIUFFRA. In fact, the first time you ever gave any testimony on the significance of the Rose billing records was yesterday at your deposition?

Mr. SWITZER. Yes, it was.

Mr. GIUFFRA. Ms. Black, that is also true for you, correct?

Ms. BLACK. That's correct.

Mr. GIUFFRA. Ms. Black, under the Model Rules of Professional Responsibility and RTC regulations, Rose was obligated to disclose to the RTC if it was representing or had represented any client who had an interest that was actually or potentially adverse to the RTC in the Frost litigation?

Ms. BLACK. The model rules are the Arkansas rules governing the behavior of attorneys and the need to disclose conflicts that attorneys might have between representation of one client and another. RTC had a number of handbooks and other issuances which go beyond the model rules and require disclosure of any potential conflict as soon as that becomes known to a law firm.

Mr. GIUFFRA. Under the model rules, if a lawyer's own conduct might be at issue in a case, a conflict issue could arise?

Ms. BLACK. That is correct.

Mr. GIUFFRA. A key issue in the Frost litigation was an action that Webster Hubbell was the lead attorney on behalf of the RTC against the Frost accounting firm which audited Madison's books?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Another key issue in that litigation was the extent to which Frost's audits caused Madison's losses?

Ms. BLACK. That's correct.

Mr. GIUFFRA. Frost claimed insider transactions involving people like Mr. McDougal were what caused the losses and whether the audits were good or bad was irrelevant?

Ms. BLACK. That was Frost's primary defense.

Mr. GIUFFRA. The extent Madison was involved in the Castle Grande transaction was important to your conflicts analysis?

Ms. BLACK. The extent to which Rose was involved and Madison's involvement, yes, sir.

Mr. GIUFFRA. The RTC subpoenaed billing records and other materials from the Rose Law Firm on March 4, 1994; is that right?

Ms. BLACK. If you're referring to the RTC IG, our subpoena was March 15.

Mr. GIUFFRA. March 15. You were subsequently advised by Rose that no billing records existed?

Ms. BLACK. Rose did provide a lot of billing records with regard to the work directly for the RTC.

Mr. GIUFFRA. But with regard to the Madison representation?

Ms. BLACK. The March 15 subpoena also asked for any invoices that had been submitted to Madison itself in connection with Rose's work for them and Rose indicated that it had no such invoices.

Mr. GIUFFRA. When you learned of the discovery of these billing records at the White House, what was your reaction?

Ms. BLACK. I was curious as to what they showed.

Mr. GIUFFRA. Am I correct that when you issued your report on August 3, 1995, the Rose billing material was very sparse?

Ms. BLACK. As to their Madison representation, yes, sir, it was.

Mr. GIUFFRA. You only obtained a handful of Rose invoices with regard to the Madison representation?

Ms. BLACK. Yes, and those we found in the Madison records which RTC had inherited.

Mr. GIUFFRA. It was difficult for you to understand what work Rose had done for Madison because of the absence of this billing information?

Ms. BLACK. Yes. We had, as I said, a few bills which described in summary fashion what had been done. For the most part, there was no indication as to the precise nature of the work or when the work was done.

Mr. GIUFFRA. Would you agree that billing records are typically the best available evidence for trying to ascertain the extent and nature of the law firm's work with regard to a conflicts analysis?

Ms. BLACK. They are the best that I have seen in this case, in any event.

Mr. GIUFFRA. Would you agree that the billing records that were found at the White House are very important evidence for purposes of your conflicts analysis?

Ms. BLACK. They certainly are extremely relevant evidence, yes.

Mr. GIUFFRA. Mr. Switzer, you would agree that these billing records that were found at the White House are extremely relevant evidence for your conflicts analysis?

Mr. SWITZER. Yes, sir, I would. I mean in the sense that we did not have that information when we did our work.

Mr. GIUFFRA. Ms. Black, in your report you included a recitation of various facts that were material to the conflicts inquiry.

Ms. BLACK. Yes.

Mr. GIUFFRA. You would have included additional facts had this billing material been available; isn't that right?

Ms. BLACK. We would have.

Mr. GIUFFRA. You might have asked additional questions of witnesses had the billing material been available?

Ms. BLACK. Yes.

Mr. GIUFFRA. In fact, you might have interviewed additional witnesses had the billing material been available when you were doing your investigation?

Ms. BLACK. That is correct.

Mr. GIUFFRA. The RTC IG did not interview Mrs. Clinton?

Ms. BLACK. No, we did not.

Mr. GIUFFRA. You did not interview Mrs. Clinton because you did not believe there was sufficient evidence of her involvement with regard to the Madison representation to justify an interview?

Ms. BLACK. That is essentially correct, and she, of course, had done no work for the RTC itself.

Mr. GIUFFRA. If you had had these billing records back in 1994 and 1995, would you have attempted to interview Mrs. Clinton?

Ms. BLACK. I think that is quite likely.

Mr. GIUFFRA. Why would you have attempted to interview Mrs. Clinton if you had these billing records available?

Ms. BLACK. To determine the extent to which Rose may have had actual or potential conflicts, which was the scope of our investigation. It is important to know what was done in connection with the representation of Madison. The billing records indicate with some specificity what was done, and they indicate that Mrs. Clinton was actively billing on a couple of matters that were of interest to us in our conflicts investigation.

Mr. GIUFFRA. Do you recall your House testimony where you said—and I'll quote it at page 52—"we have no evidence that Mrs. Clinton worked on Castle Grande." Do you recall that testimony?

Ms. BLACK. Yes, I do.

Mr. GIUFFRA. In light of the newly discovered billing records, would you want to amplify or amend your prior testimony?

Ms. BLACK. First, let me clarify that I was using the term "Castle Grande," as we at the RTC always have, interchangeably with the IDC matter. We typically refer to it as the IDC/Castle Grande matter, and I was answering that question on that basis. That answer would not have been the same had I had the billing records.

Mr. GIUFFRA. How would you have changed your answer in light of these billing records with regard to Mrs. Clinton's role with regard to Rose's representation of Madison Guaranty?

Ms. BLACK. As to the IDC—

Mr. GIUFFRA. IDC/Castle Grande transaction.

Ms. BLACK. We still do not know what Mrs. Clinton's role was in the time period of the closing of the initial IDC purchase because we don't have the backup billing memoranda for the IDC matter number 5.

Mr. GIUFFRA. You have the invoice for the September bill and the October bill?

Ms. BLACK. That is correct.

Mr. GIUFFRA. You don't have the billing memoranda for the September or the October bill?

Ms. BLACK. That is correct, nor do we have it for the January bill, which appears to be a compilation of work that was done between September and January. So we still don't know the precise nature of her involvement. However, we do have the billing memorandum that backs up a part of that January bill that indicates work that was done in December 1985 and January 1986. We have a billing memorandum on a general matter, which has an entry obviously IDC-related and has been so noted on the bill. That showed Mrs. Clinton was actively billing on the IDC matter.

In addition, Mrs. Clinton continued to bill during the course of 1986 on some subsequent IDC transactions that included, for example, the May 1st option agreement which gave Madison Financial an option to purchase the final parcel, 22½-acres known as Holman Acres from Seth Ward.

Mr. GIUFFRA. In your August 3rd report, you indicated that conflicting evidence existed as to whether Mrs. Clinton or Mr. Hubbell was the billing partner at Rose regarding the IDC/Castle Grande matter.

Ms. BLACK. That is correct. There was a handwritten document that appeared to be the document that opened matter number 5 within the Rose Law Firm. It was provided to us by the Rose Law Firm and the billing partner was listed as number 42. Number 42 was Mr. Hubbell within the Rose Law Firm. We asked Mr. Hubbell if he was ever the billing partner. He indicated that he was not. We were aware that Mrs. Clinton's billing code for that purpose was number 43. The billing records that we now have list Mrs. Clinton as the billing partner on Madison/IDC.

Mr. GIUFFRA. In fact, on all Madison matters?

Ms. BLACK. On all Madison matters, that is correct. There are a total of six of them.

Mr. GIUFFRA. If we could put up on the Elmo a June 17, 1985 Rose letter to Beverly Bassett Schaffer. This letter was referenced in your report of August 3, 1995, and you described an exchange of correspondence between the Arkansas S&L Board and Mr. Massey of the Rose Law Firm. Your attention was focused to the question of the so-called direct investment limitation, which is a matter of Arkansas law.

This was a letter that was submitted to the S&L board in connection with Madison's role to open a broker-dealer subsidiary, isn't that right?

Ms. BLACK. Yes, it was.

Mr. GIUFFRA. Mr. Massey indicated that this proposed subsidiary would not violate the direct investment limitation; isn't that right?

Ms. BLACK. That is correct.

Mr. GIUFFRA. If we could, put the Rose billing record 28965 on the Elmo. This is a record reflecting time of Mrs. Clinton and Mr. Massey. This letter was dated June 17, 1985, and referenced the direct investment rule. This was an application amendment with regard to the proposal to engage in brokerage activities, and the billing record indicates that on June 17, 1985, Mrs. Clinton reviewed this application containing the discussion of the direct investment rule; isn't that right?

Ms. BLACK. Yes, it does.

Mr. GIUFFRA. Would the fact that Mrs. Clinton reviewed this amended application which contained reference to the direct investment rule be material for purposes of your conflicts analysis?

Ms. BLACK. Yes.

Mr. GIUFFRA. Would it be material because a partner at the Rose Law Firm, as opposed to Mr. Massey who was a young associate, was aware of the direct investment rule?

Ms. BLACK. That is correct.

Mr. GIUFFRA. Broader knowledge of the direct investment rule within the firm would be significant for purposes of your conflicts analysis?

Ms. BLACK. That is correct.

Mr. GIUFFRA. Why would broader knowledge of the direct investment limitation be relevant for purposes of your conflicts analysis?

Ms. BLACK. The IDC purchase was, according to the examiners—and I think it's fairly well recognized—was ultimately structured in such a way as to attempt to avoid the 6 percent limitation rule. Mr. Massey was the attorney within the Rose Law Firm who had knowledge of that 6 percent limitation. Mr. Thrash was the attorney within the Rose Law Firm who closed the IDC transaction.

When we were looking at the conflicts question, the issue arose as to whether Rose would have known that the acquisition would have been prohibited by the 6 percent limitation. The fact that Mrs. Clinton apparently reviewed—billed for reviewing a document which references that 6 percent limitation would be relevant to looking at the degree of knowledge within the Rose Law Firm, and Mrs. Clinton was the billing partner for both transactions.

Mr. GIUFFRA. In fact, Mr. Massey did not bill time on the IDC transaction, but Mrs. Clinton did?

Ms. BLACK. That is correct.

Mr. GIUFFRA. Isn't it also true that we now know from the Rose billing records that were discovered at the White House that Mrs. Clinton had at least 15 telephone calls or conferences with Mr. Seth Ward in connection with this IDC matter?

Ms. BLACK. Yes, 15 or 16. One day there's a billing for a telephone conference. There's a comma and it says "conference with"—that appears to be a telephone conference and a meeting. If you count that for two, that's 16.

Mr. GIUFFRA. You're aware that Mr. Ward in a sworn statement to your agency has said that he did not work with Mrs. Clinton on the IDC transaction?

Ms. BLACK. Yes, he did.

Mr. GIUFFRA. This discrepancy between the billing records and Mr. Ward's sworn statement with regard to Mrs. Clinton's involvement in the Castle Grande/IDC transaction would have been something that you would have included in your conflicts investigation and analysis?

Ms. BLACK. Had we known about it, we would have indicated that Mr. Ward stated that he did not remember working with Mrs. Clinton. We would also have indicated that Mrs. Clinton had billed for conversations with Mr. Ward.

Mr. GIUFFRA. Why would Mrs. Clinton's communications with Mr. Ward, who regulators have said was the straw purchaser on the IDC/Castle Grande transaction, be material for purposes of your conflicts analysis?

Ms. BLACK. Mr. Ward was an employee of Madison Financial, and he was also cited by the regulators as being a primary straw purchaser, part of the insider deals that resulted in a substantial loss to the institution.

Mr. GIUFFRA. And Mrs. Clinton's communications with Mr. Ward would be relevant for what reason?

Ms. BLACK. Again, going back to the conflicts investigation, which we were doing, the issue was whether the conduct of Rose could itself become an issue in that litigation. If it had that potential—

Mr. GIUFFRA. The question being whether Rose had knowledge of the sham nature of the transaction?

Ms. BLACK. That is a question, yes. But even if the conduct could become an issue, whether or not the conduct was proven to be misconduct, the very fact that it could become an issue is a fact which would have to—a matter which would have to be disclosed to RTC as a potential conflict.

Mr. GIUFFRA. In fact, Rose's work on the Castle Grande/IDC transaction was never disclosed to the RTC?

Ms. BLACK. No, sir. It was not.

Mr. GIUFFRA. Mr. Hubbell, who is the billing partner on the Frost matter, in fact, never disclosed it to Ms. Breslaw, according to Ms. Breslaw?

Ms. BLACK. Yes. According to Ms. Breslaw, there was no prior work disclosed by Rose with regard to Madison to her. She said that she found out about it from press reports and called Mr. Hubbell at the Department of Justice to ask him what that was all about. Mr. Hubbell's recollection was that he had told her they had done some work on a couple of minor regulatory matters for the institution.

Mr. GIUFFRA. You previously referenced that the billing records indicate that Mrs. Clinton spent 2 hours on May 1, 1986 drafting the option agreement, and that was dated May 1, 1986. Was the option agreement a way to provide commissions to Mr. Ward?

Ms. BLACK. A second problem that we looked at or potential problem that we looked at in the conflicts investigation was the question of the litigation of *Ward v. Madison*. April Breslaw, the attorney involved, as well as several other RTC employees, had expressed concern about that particular litigation because of Mr. Hubbell's relationship with Seth Ward; that is to say, Mr. Hubbell

is Mr. Ward's son-in-law. So there was a specific concern addressed to the Rose Law Firm——

Mr. GIUFFRA. In fact, wasn't the option agreement an important part of the litigation between Mr. Ward and Madison?

Ms. BLACK. Yes, it was.

Mr. GIUFFRA. The fact that Mrs. Clinton had drafted the option agreement never came out at the trial?

Ms. BLACK. No, it did not.

Mr. GIUFFRA. That's something that the RTC would have wanted to know at the time that it retained Madison to represent—Rose to represent the RTC in the Frost litigation?

Ms. BLACK. Because the Ward litigation also involved as a part of this same transaction an underlying note for \$300,000, which was part of the damage calculations in Frost, those two cases were closely related, and the prior involvement was a matter which should have been disclosed to the RTC.

Mr. GIUFFRA. We know from the billing records Mrs. Clinton had two telephone calls with a man named Darrell Dover. Do you recall that from examining the billing records?

Ms. BLACK. Yes.

Mr. GIUFFRA. Mr. Dover represented IDC in connection with the sale of the property to Madison and Ward?

Ms. BLACK. Yes, the initial sale.

Mr. GIUFFRA. Mrs. Clinton's communications indicate some greater involvement by Rose in the IDC/Castle Grande acquisition?

Ms. BLACK. It indicates some specifics of the involvement, and it indicates some sort of involvement by Mrs. Clinton that we were not previously aware of.

Mr. GIUFFRA. Presumably with regard to the acquisition of the property?

Ms. BLACK. I do not know what the subject of the conversation was. I know that Mr. Dover represented IDC in that transaction.

Mr. GIUFFRA. You would have included the fact of those telephone calls in your conflicts analysis?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. We also know from the billing records that on the day before Rose sent a letter to the Arkansas Securities Commission seeking approval of a novel preferred stock offering, that Mrs. Clinton spoke with Beverly Bassett, who was the S&L regulator?

Ms. BLACK. Yes.

Mr. GIUFFRA. You would have included the fact that on the day before this application was submitted, Mrs. Clinton had spoken with Ms. Bassett in your conflicts analysis?

Ms. BLACK. That was a fact that we probably would have included.

Mr. GIUFFRA. If we could just put up on the Elmo the Hillary Clinton IDC billing analysis that the Committee has prepared. We showed this to you yesterday at your deposition——

Ms. BLACK. You did, but it's blurry. I can't read it.

Mr. GIUFFRA. I apologize for that. If I could briefly summarize it, we've been able to identify 15 hours of work that Mrs. Clinton did on the IDC/Castle Grande matter, but then there's this unknown period for which Mrs. Clinton billed \$1,818 which at her rate of \$125 an hour would constitute 14½ hours of work. Given that we

don't know—would you have reported the fact in your conflicts analysis we don't know the full extent of Mrs. Clinton's work on the IDC/Castle Grande matter?

Ms. BLACK. What we would have reported—I believe these are figures taken from the January 1986 invoice and the partial underlying billing memorandum. We would have reported that there were 15 hours that were billed and that were specifically identified in terms of the work that was done on the billing memorandum.

We would have also reported that there was a handwritten change to the total amount billed and indicated what that change was. Whether we would have extrapolated the billing rate and the number of hours that that might represent, I don't know.

Mr. GIUFFRA. The issue would be whether Mrs. Clinton, in fact, did more work on the IDC/Castle Grande matter than previously assumed?

Ms. BLACK. The difference would have been a fact that we would have reported.

Mr. GIUFFRA. And that would have been relevant to the conflicts investigation because it would have shown greater involvement by Rose in this transaction that was criticized as being a sham?

Ms. BLACK. That may well be true.

Mr. GIUFFRA. Mr. Switzer, if I could put some questions to you, sir. You've prepared a document. Let's put it up. It's Switzer Exhibit 3. Now, Mr. Switzer, you're an accountant by training?

Mr. SWITZER. Yes, I am.

Mr. GIUFFRA. You've audited many law firm bills for the RTC?

Mr. SWITZER. I've managed that type of work, yes.

Mr. GIUFFRA. We know that Mrs. Clinton was the billing partner on the Madison account. In examining the Rose Law Firm bills that were found at the White House—you've done that?

Mr. SWITZER. I'm sorry, would you repeat that, please.

Mr. GIUFFRA. You have examined the Rose Law Firm bills that were found at the White House?

Mr. SWITZER. Yes, we have.

Mr. GIUFFRA. Am I correct that you've identified a number of discrepancies in the Rose Law Firm Madison bills that were found at the White House?

Mr. SWITZER. Yes, we have. We identified some differences in there from an accounting point of view which are noteworthy to us, but we don't have an explanation for them.

Mr. GIUFFRA. The discrepancies that you have identified in the Rose bills would be the fact that the amount that's set forth in the billing memo, which sets forth the time on an hourly basis by the lawyers and the actual amount that was invoiced, there's a \$5,735 discrepancy; is that right?

Mr. SWITZER. Yes, that's what we determined.

Mr. GIUFFRA. With regard to the billing history, which is—what is the billing history?

Mr. SWITZER. In my terms, that's their accounting record of their overall activity. It's a summation on the—summation at the top of the documents that the Committee provided to us.

Mr. GIUFFRA. If you look at the actual invoice, you've identified a \$3,170 discrepancy?

Mr. SWITZER. Yes, we did.

Mr. GIUFFRA. Now, obviously the greater the amount of fees collected by Rose, that would be relevant to your conflicts analysis?

Mr. SWITZER. It could have some impact and the most significant impact, of course, would be that there was or was not a conflict.

Mr. GIUFFRA. But the greater the involvement, the more likely that—

Mr. SWITZER. It would indicate greater involvement, yes.

Mr. GIUFFRA. Normally an accountant would assume that a bill that's marked paid has, in fact, been paid; is that right?

Mr. SWITZER. Yes, that's the case.

Mr. GIUFFRA. In looking at the September 20, 1985 Rose bill for IDC, which was for \$654.30, you note that bill was marked paid; isn't that right?

Mr. SWITZER. Yes, we did.

Mr. GIUFFRA. Therefore, you assume that Madison paid the bill?

Mr. SWITZER. Yes. Basically, it was a transfer from the trust account, my understanding.

Mr. GIUFFRA. You have also noted in your deposition that the October 29, 1985 bill for \$550 was marked paid?

Mr. SWITZER. Yes, we did.

Mr. GIUFFRA. So questions have been raised from your audit of these bills of possible double-billing or at least a discrepancy?

Mr. SWITZER. Well, that's based upon the explanation that we heard in testimony by Mr. Clark, that these amounts, for example, in the two you just used, the \$654.30 and the \$550, that those were, in fact, carried forward—

Mr. GIUFFRA. Into the January 30 bill?

Mr. SWITZER [continuing]. Into the January 30 bill, and the bills being marked paid would seem to suggest that they may have been paid previous to that. I understood what he said, but it didn't make sense from an accounting point of view that you got a paid bill that would have seemed to have been paid twice.

Mr. GIUFFRA. And the only way to find out whether there was double-billing would be to get the trust account records?

Mr. SWITZER. We would need to look at the trust accounting to see what the actual disbursements were and we, in fact, have asked—requested that the FDIC lawyers who have taken this over seek this information either from Rose or from the bank.

Mr. GIUFFRA. Do you know whether the trust account records still exist?

Mr. SWITZER. I do not.

Mr. GIUFFRA. In doing audits of law firm bills, do you often attempt to ascertain whether lawyers properly bill for telephone calls and meetings within a law firm?

Mr. SWITZER. Yes, we typically do.

Mr. GIUFFRA. So if Lawyer Smith, for example, bills for a meeting with Lawyer Jones, you would want to see whether both of them record that meeting in their time sheets?

Mr. SWITZER. That would be an actual thing to do, to attempt to verify that. In fact, in the audit work that we did in connection with Rose, although it did not cover this Madison work specifically, we did question some \$15,000 worth of intraoffice conferences.

Mr. GIUFFRA. So it's a standard procedure with regard to doing an audit of a law firm's bill?

Mr. SWITZER. Yes, it is.

Mr. GIUFFRA. If we could put up the document that the Committee has prepared of attorney conference billings, now, Mr. Switzer, the Committee has identified 23 instances in which Mrs. Clinton has billed for a conference or telephone call with a lawyer at the Rose Law Firm, and the other lawyer has not billed for that same time. Would this be another area of discrepancy in the Rose bills that were found at the White House with regard to the Madison representation?

Mr. SWITZER. Yes. This would be similar to what we reported in our audit. In other words, there's a lack of verification between the two parties involved or supposedly involved in a conference where the records of one do not support the other one.

Mr. GIUFFRA. That would be something that would be relevant for your conflicts analysis as well?

Mr. SWITZER. Not directly.

Mr. GIUFFRA. It could show that the Rose Law Firm did more work for Madison than——

Mr. SWITZER. Really, it's an accounting or an auditing discrepancy. I don't think it would get at the conflicts issues.

Mr. GIUFFRA. Thank you.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. I am going to yield to Mr. Ben-Veniste, but first, I'm just curious. What is your conflicts analysis with respect to familial relationships?

Ms. BLACK. I guess I'm not sure I understand your question.

Senator SARBANES. If I am a lawyer, do I automatically have a conflict if a family member is on the other side? And how far does that extend?

Ms. BLACK. You do not automatically have a conflict just because any family member is on the other side. I believe the guidance to the model rules suggest that it depends on how close the relationship is, and it also talks about that being a point which you talk to your client about it, and let the client decide. If the client is comfortable——

Senator SARBANES. Are there certain family members that the relationship is presumed to be so close that it automatically is a conflict?

Ms. BLACK. I would have to look back at the comments to see if that was right, but if I understand what you are getting at, son-in-law and father-in-law, is not. With that, I am comfortable.

Senator SARBANES. The fact that your father-in-law is on the other side is not automatically a conflict?

Ms. BLACK. I believe that is correct, yes, sir.

Senator SARBANES. There was one line of questioning Mr. Giuffra was putting to you. Is a greater participation or more involvement in and of itself an indication of a greater conflict problem?

Ms. BLACK. That would be something which we would certainly report as a fact for the decider of fact to look at, but what is really important is what was done.

Senator SARBANES. In other words, I could represent someone, have extensive involvement and participation, and no conflict, I take it?

Ms. BLACK. I agree.

Senator SARBANES. Or have very little involvement or participation and yet have a conflict?

Ms. BLACK. I agree with that also.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Ms. Black. Good morning, Mr. Switzer.

Ms. BLACK. Good morning.

Mr. BEN-VENISTE. Let me start with a minor point I think that you and Mr. Switzer just testified about. That is the way you go about your audits when there's an interfirm conference lawyer A confers with lawyer B. As an auditing procedure, you look to see whether both lawyers have written down time for that conference?

Mr. SWITZER. We would look to that as a form of verification, yes.

Mr. BEN-VENISTE. A verification that the conference took place?

Mr. SWITZER. That would tend to support such an event if we didn't have other support.

Mr. BEN-VENISTE. If you're in a normal audit situation, and that would involve a law firm that's working for the RTC, and you're auditing that law firm, and you see a conference between lawyer A and lawyer B. Lawyer A bills for it; lawyer B doesn't bill for that time. You have two possibilities: One, that the conference didn't take place and lawyer A made it up; or two, that lawyer B didn't bill the RTC for the time he spent in the conference that did take place, and therefore, the RTC got a bargain essentially?

Mr. SWITZER. Yes. By that, I mean there are two options there.

Mr. BEN-VENISTE. That would go to the law firm's procedures perhaps and their own way of billing clients if there is an internal conference. Did you find out whether back in 1985 and 1986 the Rose Law Firm had a particular procedure as to whether they would bill clients for internal conferences charging them for each lawyer who participated?

Mr. SWITZER. None that I recall.

Mr. BEN-VENISTE. If they had such a procedure whereby they did not bill the client for both attorneys' time, would that make a difference in terms of your analysis?

Mr. SWITZER. It could. However, our audit report did not cover that period of time back then, and Rose's response was that they should have billed for both of the people who were involved in these conferences that we identified.

Mr. BEN-VENISTE. Now, we're mixing apples and oranges.

Mr. SWITZER. I understand.

Mr. BEN-VENISTE. We're talking about your audit, which had to do with work that the Rose Firm did for the Government, for the RTC as its client?

Mr. SWITZER. Which is subsequent to this time.

Mr. BEN-VENISTE. As compared with the earlier work that was done for a private client?

Mr. SWITZER. That's correct.

Mr. BEN-VENISTE. When Rose said to you well, we should have billed for the time of both lawyers, did that mean that the bill was increased?

Mr. SWITZER. That's one of the issues we presented in our audit report to the RTC and now for the FDIC in terms of these questions of cost.

Mr. BEN-VENISTE. It hasn't been determined whether the Rose Firm would be credited for the extra time put in by attorneys assuming there was an internal meeting?

Mr. SWITZER. Yes. The overall issue has not been resolved at this time.

Mr. BEN-VENISTE. Let me go to sort of a broader picture to put all this in context. Do you have some idea of how many different law firms were retained by the RTC or FDIC in the 1980's?

Mr. SWITZER. Not offhand, no, I don't.

Mr. BEN-VENISTE. Ballpark figure?

Mr. SWITZER. A lot is all I can say.

Mr. BEN-VENISTE. More than 1,000?

Mr. SWITZER. Substantially more than 1,000.

Mr. BEN-VENISTE. Take a minute to confer with the people who may be able to help your recollection.

[Witness conferred with counsel.]

Mr. SWITZER. I would leave it at well over 1,000.

Mr. BEN-VENISTE. Different law firms. The idea of representing the RTC was in great part to maximize the recovery that the Government could obtain as the result of failed S&L's for which the Government's insurance was brought into play?

Mr. SWITZER. In general, that was a basic driving force of the RTC.

Mr. BEN-VENISTE. It was included at some point that the Government couldn't do this on its own effectively, and it would have to go to outside private law firms to help it recover these funds?

Mr. SWITZER. It was more a matter of efficiency rather than effectiveness. The Government could have done it, but we would have had to hire a lot of lawyers.

Mr. BEN-VENISTE. It was considered desirable and beneficial to go the private route in retaining private firms to represent the Government in these proceedings?

Mr. SWITZER. Yes.

Mr. BEN-VENISTE. In that context, among other things, you wanted to find out whether there was a conflict of interest between the law firm whom the Government would retain to represent its interest and the matters in which those law firms would be operating?

Mr. SWITZER. That was one of the basic steps that the RTC would go through in deciding whether to retain a firm.

Mr. BEN-VENISTE. Can you tell us approximately how many law firms had billings to the RTC, to the Government in excess of \$1 million?

Mr. SWITZER. I have no idea offhand.

Mr. BEN-VENISTE. Would you like to confer to see—

Mr. SWITZER. I don't think they would either.

[Witness conferred with counsel.]

Mr. SWITZER. I wouldn't want to speculate.

Mr. BEN-VENISTE. How many people were involved in auditing these law firms?

Mr. SWITZER. Well, from our staff, we had a number of auditors who participated in these audits. We also engaged public accounting firms to assist us in doing these audits.

Mr. BEN-VENISTE. Can you tell us how many firms had billings in excess of \$1 million, even by estimating, was it half of the firms that you retained?

Mr. SWITZER. It would be a guess, 10, 15, 20 percent maybe, and that's the best I can come up with, would just be a guess.

Mr. BEN-VENISTE. It was well in excess of 1,000 and it was 20 percent, we would be over—clearly over 200 law firms?

Mr. SWITZER. If my guess is right, that would be good, yes.

Mr. BEN-VENISTE. Now, how many firms had portions of their billings disallowed as a result of the audit procedures that were instituted by the IG's office?

[Witness conferred with counsel.]

Mr. SWITZER. Between our office and CPA firms who conducted these audits on our behalf, we probably conducted between 75 and 100 of those audits and virtually every one had that problem.

Mr. BEN-VENISTE. When you say virtually every firm who was audited had a problem, does that mean that their billings were disallowed?

Mr. SWITZER. Some parts of their billings would have been disallowed, yes.

Mr. BEN-VENISTE. You say you audited 10 percent of the well over 1,000 firms who did work for the RTC?

Mr. SWITZER. If the thousand is right and 100 is the high side of it, yes, it would be 10 percent.

Mr. BEN-VENISTE. Ms. Black, does that agree with any information you may have? I don't want to leave you out of this discussion.

Ms. BLACK. I am content to be left out. I was not running the audit staff, so I—

Mr. BEN-VENISTE. Did you participate in any of the audits?

Ms. BLACK. Some of them, yes.

Mr. BEN-VENISTE. About how many?

Ms. BLACK. My primary participation would be through talking to the auditors, providing them advice, answering some questions and occasionally issuing subpoenas. My personal participation, 10 to 15.

Mr. BEN-VENISTE. Mr. Switzer, how many audits did you participate in?

Mr. SWITZER. Directly, probably hardly any of them other than a management capacity.

Mr. BEN-VENISTE. I'm sorry, I couldn't hear your answer.

Mr. SWITZER. Directly, very few of them because I looked at the drafted reports, as well as I would look at the issued reports. My role was as a deputy in a management position.

Mr. BEN-VENISTE. As a deputy in a management position, can you say what percentage of the firms which were audited had billings that were questioned at or about the same level as the Rose Law Firm?

Mr. SWITZER. I do not recall that information specifically, no, sir.

Mr. BEN-VENISTE. You can't help us in terms of putting into context whether the Rose Law Firm was above or below average in terms of the firms that were audited?

Mr. SWITZER. Not off the top of my head. I would be glad to provide that information for the record.

Mr. BEN-VENISTE. Ms. Black.

Ms. BLACK. I can't do it right now either.

Mr. BEN-VENISTE. Can you tell us whether in the case of Rose that you attempted to audit all of the invoices?

Mr. SWITZER. Yes, we did because of the nature of the representation and the issues surrounding it.

Mr. BEN-VENISTE. Can you tell us whether in your experience, and to the best of your knowledge, if any other law firm in these audit procedures of over 100 firms had all of their invoices audited? [Witness conferred with counsel.]

Mr. SWITZER. Staff tells me that there was probably one or two others, but generally—

Mr. BEN-VENISTE. None to your knowledge, but now on the basis of information, you're hearing maybe one or two other firms?

Mr. SWITZER. That's correct.

Mr. BEN-VENISTE. In all of the auditing procedures that have been accomplished today?

Mr. SWITZER. Auditing 100 percent of anything is not generally routine.

Mr. BEN-VENISTE. Extremely unusual?

Mr. SWITZER. It is unusual, yes.

Mr. BEN-VENISTE. If you say there was well over 1,000 firms involved, 10 percent of the firms were audited and of all the firms that were audited, maybe 1 percent of those had all of their invoices audited. We're talking about very special scrutiny that was placed on the Rose Law Firm here?

Mr. SWITZER. It was more elaborate scrutiny, if you would, than normally is experienced and we were responding to requests from the acting CEO of the RTC at that time.

Mr. BEN-VENISTE. In connection with the disallowance of bills presented by the law firm to the RTC—first of all, let's make this very clear. I think Ms. Black alluded to it earlier. Hillary Rodham Clinton did not perform any work for the RTC?

Mr. SWITZER. That is correct.

Mr. BEN-VENISTE. Is that correct, Ms. Black?

Ms. BLACK. Yes, it is.

Mr. BEN-VENISTE. So the question of the accuracy or the appropriateness of her billing records vis-à-vis your audits of the Rose Law Firm in connection with work done for the RTC is not relevant to our discussions since she performed no work?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. Now, going to Mr. Hubbell's work, it is not clear that Mr. Hubbell was responsible for overbilling the RTC?

Mr. SWITZER. That's what we reported, yes, sir.

Mr. BEN-VENISTE. Indeed, that was a part of the prosecution of Mr. Hubbell, was it not, Federal prosecution of Mr. Hubbell?

Mr. SWITZER. Yes, I believe it was.

Mr. BEN-VENISTE. He has pleaded guilty to, among other things, overbilling the RTC?

Mr. SWITZER. Yes, sir.

Mr. BEN-VENISTE. We need to get straight the question of the acquisition of the IDC property as compared to regulatory work done for either Castle Grande or IDC in general. Let me start with the acquisition of the IDC property itself. Have you been made privy to Mr. Thrash's sworn testimony before this Committee?

Ms. BLACK. I have not read it.

Mr. BEN-VENISTE. It's public testimony, but you have not read it?

Ms. BLACK. I have not.

Mr. BEN-VENISTE. Mr. Switzer?

Mr. SWITZER. No, I have not.

Mr. BEN-VENISTE. Mr. Thrash testified last week before this Committee, and stated that he had no information and reason to believe that there was anything untoward in terms of the purchase of the IDC property by Madison Bank. Do you have any evidence to conflict Mr. Thrash's testimony?

Ms. BLACK. We have no evidence one way or the other, sir.

Mr. BEN-VENISTE. Mr. Switzer?

Mr. SWITZER. My answer would be the same.

Mr. BEN-VENISTE. We have heard from also Mr. Massey and Mr. Donovan. Mr. Donovan testified along with Mr. Thrash last week. Have you had occasion to review Mr. Donovan's sworn testimony?

Ms. BLACK. No, sir.

Mr. SWITZER. I have not.

Mr. BEN-VENISTE. Mr. Donovan was the lawyer at the Rose Firm who was responsible for handling the regulatory matters associated with the IDC parcel.

Mr. Donovan testified that he was involved in the so-called wet/dry issue and with the sewer issue. Are both of those regulatory issues matters that were known to you prior to the recent discovery of the billing records at the White House?

Ms. BLACK. We did not know in detail what was done. We did have some bills which reflected some work that was done. I believe we talked to both of those gentlemen, and in very general terms, they indicated a recollection consistent with what you just described. They did not remember very much about it at all, though.

Mr. BEN-VENISTE. You have now had the occasion to review the actual time records for time put in by Mr. Donovan and Mr. Thrash and the description of the work that they performed. Is there anything in those billing records that contradicts the information you received when you interviewed Mr. Donovan and Mr. Thrash?

Ms. BLACK. The information that we received when we interviewed them was that they could not remember very much about the transactions at all, but they did work on the types of transactions that you just indicated. The billing records, in fact, do show that Mr. Thrash billed for the IDC/Castle Grande, and that Mr. Donovan billed for issues which appear to be related to the so-called wet/dry and the water and sewer issue.

Mr. BEN-VENISTE. Mr. Donovan and Mr. Thrash testified under oath that internally at the Rose Law Firm, that these matters were referred to as the IDC matter, and Castle Grande was not a description used internally at the Rose Law Firm for these matters. Do you have any evidence that contradicts the testimony of Mr. Donovan or Mr. Thrash in this regard?

Ms. BLACK. I have no knowledge of how they referred to it within the Rose Law Firm in 1985.

Mr. BEN-VENISTE. Mr. Switzer.

Mr. SWITZER. Nor do I.

Mr. BEN-VENISTE. Let's talk about the——

Ms. BLACK. Mr. Ben-Veniste, if I could correct something I said before.

Mr. BEN-VENISTE. Yes.

Ms. BLACK. We did not interview Mr. Thrash. He did not provide a statement to us. We asked to interview him and the Rose Law Firm declined to make him available.

Mr. BEN-VENISTE. You interviewed Mr. Donovan?

Ms. BLACK. Yes.

Mr. BEN-VENISTE. The letter you referred to as being reviewed by Mrs. Clinton that was prepared by Mr. Massey, do you have that in front of you?

Ms. BLACK. Which one was that, sir?

Mr. BEN-VENISTE. It was June 17, 1985. It's got a designation.

Ms. BLACK. Yes, I have that.

Mr. BEN-VENISTE. Quintuple zero 84 in the left-hand corner.

Ms. BLACK. I have the document.

Mr. BEN-VENISTE. Did you match that up with Mrs. Clinton's billing records in terms of the review?

Ms. BLACK. We looked at the two in conjunction.

Mr. BEN-VENISTE. You were shown that. The billing records, if I'm not mistaken, reflected about 18 minutes of time?

Ms. BLACK. Three-tenths of an hour, yes, sir.

Mr. BEN-VENISTE. Eighteen minutes to review the document with 11 subparagraphs, which is about 1½ minutes per part per subparagraph. Would that arithmetic be more or less correct?

Ms. BLACK. I don't know if that arithmetic makes any sense. One of the numbered paragraphs is "inapplicable". It probably didn't take a full minute to read that, but your point is it was 18 minutes to review about a page-and-a-half letter, apparently.

Mr. BEN-VENISTE. Looks like two pages, but I don't want to quibble with you.

The CHAIRMAN. Mr. Ben-Veniste, you really are.

Mr. BEN-VENISTE. Well, let's show it. That's the second page. It looks like a two-page letter. But let me ask you the bottom-line question on this issue. That is whether you have any evidence to suggest that Mrs. Clinton had any knowledge that this transaction was structured to avoid the 6 percent limitation rule, direct investment limitation rule?

Ms. BLACK. I have no evidence as to what Mrs. Clinton knew, and I believe in her answers to the RTC's interrogatory, she says she does not recall.

Mr. BEN-VENISTE. Mr. Switzer?

Mr. SWITZER. I would say the same.

Mr. BEN-VENISTE. Let me go beyond that. The 6 percent limitation rule is an Arkansas State rule, is it not, regulating Arkansas-chartered savings and loans?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. Let's be clear on what the implications of this 6 percent limitation rule are. That rule limited savings and loans in the amount of direct investment they could make in real estate?

Ms. BLACK. Or their service corporations, yes.

Mr. BEN-VENISTE. Or their service corporations. That rule was not a rule in all States, was it?

Ms. BLACK. No.

Mr. BEN-VENISTE. Indeed, California had no such rule?

Ms. BLACK. I don't know.

Mr. SWITZER. I don't know.

Mr. BEN-VENISTE. Mr. Switzer, do you know?

Mr. SWITZER. I do not know what the California rule was.

Mr. BEN-VENISTE. Have you heard of a man named Keating, who had a service corporation in California?

Mr. SWITZER. Yes, sir.

Mr. BEN-VENISTE. Just for purposes of comparison, what was the loss that resulted from Mr. Keating's endeavors?

Mr. SWITZER. I don't recall the precise number. I do know that it was much larger than what we're talking about here.

Mr. BEN-VENISTE. In the billions?

Mr. SWITZER. I believe that's true, yes.

Mr. BEN-VENISTE. Ms. Black, do you have any further refinement on that?

Ms. BLACK. No.

Mr. BEN-VENISTE. In terms of the 6 percent direct investment rule, this is a regulation imposed by the State of Arkansas. Do you know what enforcement steps were taken in the 1980's with respect to the direct investment rule in Arkansas for savings and loans which went above 6 percent?

Ms. BLACK. I do not.

Mr. SWITZER. I do not.

Mr. BEN-VENISTE. To your knowledge, has anyone at your agency researched that issue?

Ms. BLACK. I have no idea, sir.

Mr. BEN-VENISTE. Do you happen to know that there are no criminal penalties associated with violation of the 6 percent rule?

Mr. SWITZER. I do not know that.

Mr. BEN-VENISTE. Do you know of other States which have a direct investment limitation?

Mr. SWITZER. I do not.

Ms. BLACK. I have no idea.

Mr. BEN-VENISTE. In the absence of knowledge on that subject, can you at least differentiate between a technical violation of the 6 percent rule in terms of State regulatory interest and a transaction whereby straw or sham purchasers buy and sell property for the purpose of increasing the paper value of that property?

Ms. BLACK. Those are two very different things. This was not a technical violation. This, according to the regulators, was a——

Mr. BEN-VENISTE. I understand that but in terms of the State reaction, if a savings and loan were found to have exceeded the 6 percent limitation, you don't know what the regulatory authorities would do vis-à-vis a savings and loan that exceeded that 6 percent?

Ms. BLACK. I suggest you ask Ms. Schaffer or Mr. Handley that.

Mr. BEN-VENISTE. You don't know whether they'd write a letter saying you have such-and-such a period of time to divest yourself and to come back within the limitations imposed by the State?

Ms. BLACK. I have no idea what they'd do, sir.

Mr. BEN-VENISTE. In terms of your familiarity with how State regulators regulated savings and loans, would you have any reason to believe that the reaction of the State regulatory agency would be any different than simply giving the institution time to get back into compliance?

Ms. BLACK. I don't know. I do know that Mr. Handley was very concerned about that particular fact with this particular institution. I also know that this institution during that summer was rapidly losing net worth and that the regulators became aware of that at the end of that year. I don't know what they would have done, whether they would have issued a letter, whether they would have called FSLIC in for another examination or they would have asked that the institution be taken over. I really have no idea, sir.

Mr. BEN-VENISTE. They did ask that the institution be taken over and I know what the response was.

Ms. BLACK. Eventually.

Mr. BEN-VENISTE. Wait.

Ms. BLACK. Another response is if the examiners come in, they can remove the management and stem the losses and prevent further losses which they in fact did in the summer of 1986.

Mr. BEN-VENISTE. In 1986, correct.

In terms of making the distinction between the trading back and forth of assets for the purpose of artificially increasing their paper value, those were transactions that occurred at the Madison Bank subsequent to the Rose Law Firm's representation of that bank. Is that so?

Ms. BLACK. No, sir. That was during the representation as well.

Mr. BEN-VENISTE. Do you have any evidence to suggest that the Rose Law Firm represented Madison in connection with any artificial transaction to raise the value of a particular piece of property?

Ms. BLACK. The May 1st option, according to testimony presented at the hearing in *Ward v. Madison*, was related to such a transaction. I am not saying, however, that the Rose Law Firm knew that the transaction involved was such a transaction.

Mr. BEN-VENISTE. Let's put that in context. My time is about up so I may have to come back to it. Was that option ever exercised?

Ms. BLACK. No, sir, it was not.

Mr. BEN-VENISTE. Let me get to a major question, which is on the basis of the new information that you have received with respect to the billing records. Do you have reason to suggest that the conclusion reached by Pillsbury Madison & Sutro adopted by the RTC, at least on an interim basis, that the representation performed by the Rose Law Firm in connection with the Frost matter was an appropriate resolution of that matter?

Ms. BLACK. My understanding is that they are reevaluating that.

Mr. BEN-VENISTE. Do you have any reason to believe that the result reached in the representation of the RTC in the Frost litigation was in some way inappropriate on the basis of looking at these additional records?

Ms. BLACK. That the result reached in the settlement between RTC and Frost?

Mr. BEN-VENISTE. That's correct.

Ms. BLACK. We looked at this in connection with conflicts, and we reported information in connection with conflicts. Quite frankly, sir, I'm not a professional liability lawyer, and I would defer to the experts. I just don't know. That is a hypertechnical area of the law, and I defer to them on that.

Mr. BEN-VENISTE. My concern is whether, as the result of this new information, you can conclude that the Government somehow lost money or was not adequately represented by the Rose Law Firm in the matter in which the firm represented the Government?

Ms. BLACK. What I'm suggesting is that's a question which you ought to address to the FDIC as RTC successor and Pillsbury. They are the ones that evaluated that.

Mr. BEN-VENISTE. We'll come back to that.

The CHAIRMAN. We will not review that matter repeatedly. I want to make an observation. Everyone has the right to use his or her time the way they choose. If we continue to use time in this manner, these hearings will be not only painful, but long. I have to tell you that they will continue, so it is a cooperative effort that we are going to need to move through. If we don't get the cooperation, and we get the kind of examination that in many cases wonders as to how many institutions and what percent, et cetera, we are going to be here that much longer. So I just mention it to you.

Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SARBANES. Mr. Chairman—

The CHAIRMAN. I did that on my time. When you're on your time, you can make your observations, Senator.

Senator SHELBY. Ms. Black, this investigative report we've been talking about that came from RTC, you and Mr. Switzer both contributed to this investigative report; is that right?

Ms. BLACK. Yes, we did.

Mr. SWITZER. Yes, that's right.

Senator SHELBY. This report was dated August 3, 1995; correct?

Ms. BLACK. Correct.

Senator SHELBY. Just on a time sequence basis, do you recall when the billing records that we've been discussing, Mrs. Clinton's part of the Rose Law Firm billing records were discovered at the White House, was it before or after August 3?

Ms. BLACK. You're referring to Ms. Huber's testimony?

Senator SHELBY. Huber, that's right.

Ms. BLACK. As to when she first saw them on the table? I believe she said it was the first or second weekend in August.

Senator SHELBY. Right after this came out, those records just happened to reappear at the White House as far as the time sequence. It was after August 3, wasn't it?

Ms. BLACK. I believe that was her testimony.

Senator SHELBY. Both of you, as investigators, hope you have all facts that you can put together to help make a clearer, more definitive report, would you not?

Ms. BLACK. Of course, you try to get all the facts you can.

Senator SHELBY. Sure. So if you didn't have the billing records, they were not available until after this report came out, you could not make a complete report, could you?

Ms. BLACK. Our report was as complete as it could be at that time.

Senator SHELBY. It was as complete as you could get the information at that time to make it; is that correct?

Ms. BLACK. That is correct.

Senator SHELBY. You mentioned a minute ago that in light of the billing records and other things, that the FDIC, which is successor in interest to the RTC, is reevaluating this report?

Ms. BLACK. We were asked to review——

Senator SHELBY. Review or——

Ms. BLACK [continuing]. The billing records ourselves to determine what impact it would have. We are doing that.

My understanding is that Pillsbury Madison, which is FDIC's outside counsel in that matter, is also reevaluating it at this time.

Senator SHELBY. As an investigator, when you find some information, oftentimes it leads to other information that maybe you would need to shed light on a subject?

Ms. BLACK. Yes, sir.

Mr. SWITZER. Yes.

Senator SHELBY. Does the timeliness of your report, August 3rd and then the timeliness of finding the billing records at the White House bother you at all, as far as a correlation of the reports? Does it cause you to think well, where were these records when we needed them or when we would have had them——

Ms. BLACK. I was very curious about what they had in them.

Senator SHELBY. Mr. Switzer, were you very curious about those records appearing at the White House just a few days after this investigative report was issued which you say——

Mr. SWITZER. I have really never put when they were exactly—— when they were reportedly initially found together. I focused on when they surfaced in January.

Senator SHELBY. If there's testimony by the woman who found them that it was in the first part of August——

Mr. SWITZER. Yes, I understand that now. I had never put that together.

Senator SHELBY. But if that were true, would that make——

Mr. SWITZER. Curious would be the term.

Senator SHELBY. You would become very curious as an investigator, would you not?

Mr. SWITZER. Yes, sir.

Senator SHELBY. Would you want to open up this report and say where do we go from here with new information?

Mr. SWITZER. That is, of course, what we in essence have done.

Senator SHELBY. Just common sense, isn't it?

Mr. SWITZER. Yes, sir.

Senator SHELBY. Doesn't information act as a road map where any investigation goes or finally leads?

Ms. BLACK. Sure.

Senator SHELBY. A little here and a little there leads to a certain place?

Ms. BLACK. Yes.

Senator SHELBY. If you were aware at the time of your initial investigation, which you say is incomplete and obviously, it is, Mrs. Clinton had 14 telephone conversations with Seth Ward regarding the IDC matter, would that have been relevant to your investigation possibly?

Ms. BLACK. Possibly. It would have been a fact that we would have reported.

Senator SHELBY. Same with you, Mr. Switzer?

Mr. SWITZER. Yes, sir.

Senator SHELBY. If you were aware, both of you, that Mrs. Clinton as a lawyer with the law firm had drafted the option between James McDougal and Seth Ward, would you think that might perhaps be relevant to your investigation?

Mr. SWITZER. Yes, sir. It would have been.

Senator SHELBY. Why, Mr. Switzer?

Mr. SWITZER. As I recall, we were operating somewhat under the impression that Webster Hubbell was the billing partner, and this would have indicated obviously a varying involvement by Mrs. Clinton.

Senator SHELBY. Did the RTC, to either one of your knowledge, attempt to gain access to these billing records before issuing this report?

Ms. BLACK. We had issued a subpoena on March 15 which would have—

Senator SHELBY. March 15, 1995?

Ms. BLACK. No, sir, 1994.

Senator SHELBY. 1994 for the records?

Ms. BLACK. For the records—some of which were produced. Some were clearly covered, yes, all the invoices.

Senator SHELBY. To whom did you issue this subpoena to?

Ms. BLACK. The Rose Law Firm, and they indicated they did not have these records, and they still indicate that.

Senator SHELBY. Did you issue a subpoena to the President or his wife regarding these records?

Ms. BLACK. No, sir.

Senator SHELBY. And did you issue a subpoena to anyone at the White House?

Ms. BLACK. No, sir.

Mr. SWITZER. No.

Ms. BLACK. We had no indication that records at that time might be in the White House.

Senator SHELBY. Did you have any idea where these records might be?

Ms. BLACK. No, sir. We thought they had been destroyed.

Senator SHELBY. You thought they had been destroyed. Did you know if the RTC has issued a subpoena to the Clintons for these records now or if they did?

Ms. BLACK. My understanding was that they did. I have not reviewed that subpoena and I do not know exactly what it says and exactly what it might cover, sir.

Senator SHELBY. Did the billing records that you have been made aware of indicate greater representation and involvement in the Madison matters by Mrs. Clinton than previously found in this report?

Ms. BLACK. Yes, sir.

Mr. SWITZER. Yes, sir.

Senator SHELBY. Is that right, Mr. Switzer?

Mr. SWITZER. Yes, sir.

Senator SHELBY. Did the RTC attempt to gain access to these billing records before issuing this report? You've already said yes. That was in March 1994?

Ms. BLACK. Yes, sir.

Senator SHELBY. Has the RTC entered into a tolling agreement with the law firm since the discovery of these billing records?

Ms. BLACK. My understanding is they have, sir.

Senator SHELBY. I have a copy of the tolling agreement. Would you say basically what a tolling agreement is to the public?

Ms. BLACK. A tolling agreement is an agreement between two parties to, if you will, extend the statute of limitation that might be applicable to a given matter.

Senator SHELBY. Mr. Switzer, what was your basic reaction when you first learned, sir, that the billing records had been found, discovered, stumbled upon in the book room of the White House after this report which you worked on was issued?

Mr. SWITZER. I guess it was more of a question whether that would have an impact on our report.

Senator SHELBY. Ms. Black or Mr. Switzer, would the fact that a law firm had close dealings, personal or financial, with a thrift or the savings and loan that it was seeking recovery from on behalf of the U.S. Government affect, in your view, the law firm's representation?

Ms. BLACK. The issue from a conflicts perspective is could it affect, and if it could affect, it must—these sorts of actual or potential conflicts must be disclosed to the client and allow the client to determine whether or not to go forward. That was not done.

Senator SHELBY. It was not done in this case, was it?

Ms. BLACK. No, sir.

Senator SHELBY. In this case, the Rose Law Firm that's in Little Rock represented Mr. McDougal and the Madison Savings Bank; is that correct?

Ms. BLACK. They represented Madison. Madison Guaranty was their client.

Senator SHELBY. Then they represented the RTC in trying to recover money from the Madison Savings Bank or the principals; is that correct?

Ms. BLACK. They did, but that is not always necessarily a conflict. The firm is required to indicate to the RTC what it did do and let the RTC determine whether it's got a conflict or not.

Senator SHELBY. After disclosure?

Ms. BLACK. Sure.

Senator SHELBY. In this case, do you, Ms. Black or Mr. Switzer, recall what the Rose Law Firm disclosed to you about any possible conflicts of interest between representing the RTC, in other words, the U.S. Government, the taxpayers and their prior representation of Madison and others?

Ms. BLACK. According to the statements that April Breslaw had given to us, there was no disclosure of the prior representation by Madison by the Rose Law Firm.

According—and she indicated when she found out about it, she found out about it——

Senator SHELBY. Is this an ethical problem, a conflict of interest?

Ms. BLACK. That is the issue, yes, sir.

Senator SHELBY. In other words, if you have a conflict of interest, you have an ethical problem in representing one person or firm against the other; is that right, Mr. Switzer?

Mr. SWITZER. You can, yes, sir.

Senator SHELBY. As an investigator, as an attorney and so forth?

Mr. SWITZER. This would be the type of thing, as Ms. Black has indicated, that should have been disclosed to the RTC, for the RTC lawyers to look at and make a decision as to whether that situation would present a case where they should not have employed Rose in this particular case.

Senator SHELBY. Did you in this report get into that aspect of a conflict of interest or possible conflict of interest in the Rose Law Firm?

Ms. BLACK. To a degree we did. We discussed the applicable rules.

Senator SHELBY. To what degree, Ms. Black?

Ms. BLACK. We reported the facts and we issued the report to the RTC for its consideration and action as might be appropriate.

Senator SHELBY. Were the facts here that the Rose Law Firm did not disclose to RTC that they had a possible conflict of interest?

Ms. BLACK. Yes, sir.

Senator SHELBY. Is that the facts, Mr. Switzer? Is that the fact?

Mr. SWITZER. Yes, sir, it is.

Senator SHELBY. I believe my time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Dodd.

Senator DODD. I will yield to my colleague from Massachusetts.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Ms. Black, the RTC IG report found that Rose had failed to disclose some actual or potential conflicts of interest; is that correct?

Ms. BLACK. Yes, sir.

Senator KERRY. And those were clearly articulated in the report which ultimately upon which the RTC made a judgment on through its outside counsel, Pillsbury Madison & Sutro; correct?

Ms. BLACK. Its outside counsel opined on that. The group within the RTC, the outside counsel conflict committee, also looked at it.

Senator KERRY. So the internal committee and the outside committee both reviewed and made an assessment of what was the basis for any judgment about an actual or potential conflict of interest?

Ms. BLACK. Yes.

Senator KERRY. You now have had a chance to review these billing records; correct?

Ms. BLACK. Yes.

Senator KERRY. I'm just asking you as an investigator—what is in those billing records that sheds new light on the assessments previously made by these two parties, internal and external, about conflict of interest?

Ms. BLACK. I think the continuing involvement, the extent of the involvement in the IDC transaction itself is of some import.

Senator KERRY. In what sense? Can you be a little more detailed on that?

Ms. BLACK. Yes. The involvement by the Rose Law Firm in drafting the May 1st option agreement which itself became a critical piece of evidence in the *Ward v. Madison* trial is a very salient fact. That again is because one, RTC was in litigation. The *Ward v. Madison* litigation predated RTC's intervention. A judgment was rendered against Madison in August 1988.

RTC intervened, or the Federal Government intervened in February, I believe, 1989, and RTC ultimately took over the lawsuit and tried to reopen the trial. The RTC did prosecute an appeal on it. The lawsuit was quite active until the middle of 1993, I believe, at which time it was settled.

Senator KERRY. Was a judgment made about the relationship with Seth Ward in the context of the RTC IG report?

Ms. BLACK. We did not make any judgments. We just reported the facts that we found.

Senator KERRY. I mean the internal assessment and the Pillsbury assessment came up with a judgment; correct?

Ms. BLACK. Yes.

Senator KERRY. Was there a judgment there with respect to the Seth Ward association?

Ms. BLACK. I believe, and again they did not have these billing records either, so for whatever impact that would have on their judgment. I believe they found that the Rose Law Firm—or Pillsbury said that the Rose Law Firm had represented Seth Ward. I think that's what they found.

Senator KERRY. Correct. So they were aware of it?

Ms. BLACK. Yes, they were.

Senator KERRY. This merely confirms what they were aware of?

Ms. BLACK. Sir, I think the May 1st document is an entirely new aspect. It indicates specific involvement in an ongoing case that the RTC was not aware of. I might add that the RTC had expressed specific concern about that particular case and had sought assurances that there was no involvement.

Senator KERRY. OK. What's the other aspect?

Ms. BLACK. The other—

Senator KERRY. Again, in your judgment.

Ms. BLACK. We would have reported all of the details, because those sorts of details are important to the people making judgment. So just in a general sense, there is a lot more detail here than we knew.

One of the things we did as a result of our investigation was that we asked that our report be referred to Pillsbury for consideration in connection with their review of potential liability by the Rose Law Firm, because we thought that there was relevant information in there. Although we had not gathered it for that purpose, the information in there was also relevant to that. From that perspective, the information concerning the degree of knowledge of the 6 percent limitation is relevant and it's relevant to Pillsbury's analysis.

Senator KERRY. Just so I understand it on the 6 percent issue, was that as to whether or not a presumption was made by Pillsbury Madison & Sutro with respect to knowledge of the 6 percent?

Ms. BLACK. They made the presumption only with regard to Mr. Massey, sir, and the fact that it was at that level was of some importance to them. I do not know that this information would change their analysis. I'm simply saying that it's something that we would report to them and let them determine that.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. If I could, just on that point, page 74 of the Pillsbury report—do you have a copy of that in front of you?

Ms. BLACK. No, sir, I do not.

Senator DODD. Could we get a copy, Mr. Chairman?

Senator KERRY. That's where I was going.

Senator DODD. I want to reference just the top of that page 74 while they're bringing it down to you. The report says nevertheless, counsel for the Rose Law Firm has confirmed that this document was created at the Rose Law Firm and bears word processing markings indicating that it was created by or for Mrs. Clinton, particularly the small letter "g" on the option stands for Mrs. Clinton.

Ms. BLACK. Yes, sir.

Senator DODD. Then you go to page 75, one of the options is the assumption that in fact what the billing documents ultimately show, they made that assumption in drawing the report. I'm sorry, I apologize to my colleague.

Senator KERRY. No, this is a good point.

Ms. BLACK. On that option agreement, yes, sir, they did make that assumption. They expressly stated that they were holding the report open because they needed to look at that further, and that, as I understand it, was the whole basis underlying the tolling agreement. The report expressly says that it's being held open for that reason.

Senator KERRY. The recently discovered time records did not change their conclusion because they made the assumption in the first place. I mean, that's the point. In other words, you're trying to assert that this somehow sheds a new light on which a new judgment should be made, and what I'm suggesting is that the report makes it clear that they made the assessment based on a presumption that is confirmed by the billing records. There's nothing new because their presumption was proven correctly. So I don't see how that truly affects this.

Ms. BLACK. This report is an analysis of the potential liability of the Rose Law Firm. There was a separate report on conflicts which I do not believe did address that.

Senator KERRY. OK. So we should see whether or not in their judgment they separate the two or whether they don't?

Ms. BLACK. Yes.

Senator KERRY. OK. I yield back my time.

Senator SARBANES. Why would you be doing the conflict analysis if it wasn't related to liability? Wasn't that the purpose of the conflict analysis?

Ms. BLACK. Only in part, sir. We were doing a conflicts analysis to see if there was an underlying problem with Rose representing

the RTC in this matter at all. Whether, in short, RTC rules were violated.

Senator SARBANES. For purposes of liability, for making a liability a—

Ms. BLACK. Not necessarily.

Senator SARBANES. For making a liability assertion?

Ms. BLACK. No, sir, not necessarily. That could be related to a liability assertion. But as IG's, we often look at transactions, operations within the agency and with its contractors just to determine if our own internal rules have been followed and our own requirements have been followed; and that was a big part of this. Much more so than liability, from our perspective.

Mr. SWITZER. That's what we were requested to look at, Senator. By the then-deputy CEO. There had been an internal report performed by another office within the RTC that suggested there was a problem between Rose and Frost, and we were asked to review that matter as well as any other potential conflicts, as well as review all of their billings.

Senator SARBANES. A problem that would lead to the assertion of liability against Rose?

Mr. SWITZER. No, sir. It would go back to what Ms. Black was saying, a problem with respect to a potential conflict and whether they had been engaged under the proper rules—"they" being the Rose Law Firm, the rules and regulations of the RTC.

Senator SARBANES. You mean your administrative procedures?

Mr. SWITZER. Yes, sir.

Senator SARBANES. But not a liability on the part of Rose?

Mr. SWITZER. That was not what we were initially looking for, no, sir. As Ms. Black pointed out, this is just information for others to consider in their process.

The CHAIRMAN. We're going to take a 5-minute break.

[Recess.]

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Black, according to the testimony that you gave over in the House, you had no evidence Mrs. Clinton did work on this Castle Grande; isn't that right?

Ms. BLACK. That was what I testified to in the House, except for the water and sewer and the wet/dry issue. We knew she had some involvement with that, but that was very narrow.

Senator FAIRCLOTH. In Mrs. Clinton's answer to the RTC interrogation on February 4, 1994, which was under oath, Mrs. Clinton answered question number 29 on page 73.

This is why I assume these documents are here.

I don't believe I knew anything about any of these real estate parcels and projects, except I think I was generally aware at some point that Mr. McDougal was involved in some ventures which involved a real estate project on the island of Campobello. I have no specific knowledge about this.

So from these answers, you assumed that Mrs. Clinton had done no work on Castle Grande?

Ms. BLACK. From answers that she gave to questions and from the records available to us, we saw no involvement at that time, and that's why I answered the question the way I did.

Senator FAIRCLOTH. Mr. Chairman, if I may, I want to play a VCR tape on some answers Mrs. Clinton gave on ABC News.

The CHAIRMAN. If you have no sound, you can't very well play the tape. See if the technicians can repair that? Senator, continue and we can come back, if you want, to try to make your point.

Senator FAIRCLOTH. Yes, Ms. Black, I guess the question is, was it an accident that these records appeared days after the statute of limitation expired for the Clintons? Reviewing the records, if you had them before December 31, 1995, would you have recommended that a tolling agreement be reached with Mrs. Clinton?

Ms. BLACK. Sir, we would have just reported the facts and allowed the RTC legal division to take whatever action it deemed appropriate.

Senator FAIRCLOTH. You've testified that this option was central to the Ward/McDougal transaction. What troubles me is how did Mrs. Clinton, who apparently represented both the seller and the buyer in this option deal—isn't that a conflict of interest in most any law firm?

Ms. BLACK. I don't know that she represented both the seller and the buyer. All I know is that she drafted the agreement and billed Madison for it.

Senator FAIRCLOTH. Let me ask you, to get to the core of this thing. Is it not reasonable that any lawyer, and certainly one that some people have classified at one point as one of the 100 smartest lawyers in the country, could fiddle with this sham deal, these real estate options going back and forth, and not know that they were fake and sham deals? How could the smartest lawyer in the country, as she has been classified, go at this stuff like a blind horse to the battle, blinded and deafened, neither seeing the fire nor hearing the cannon, just go into it? Do you think that's reasonable?

Ms. BLACK. Sir, we're a factfinding entity. That's really all we do.

Senator FAIRCLOTH. If you had been the lawyer in Hillary's position, do you not think you would have suspected?

Ms. BLACK. I'm not a real estate lawyer, sir. Again, I'm a finder of fact here, presenter of fact here. I'm not comfortable with drawing conclusions or speculating.

Senator FAIRCLOTH. All right. Did we get the tape to work?

The CHAIRMAN. Senator, they tell me that they haven't been able to work that out. May I suggest, until they are able to repair the problem, that you withhold from that line of questioning.

Senator FAIRCLOTH. All right. I really have no other questions. It is just inconceivable to me that this could have gone on and on with these sham deals and that smart a lawyer not realized what they were.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Senator MOSELEY-BRAUN. Mr. Chairman—

The CHAIRMAN. Senator Moseley-Braun.

OPENING COMMENT OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Mr. Chairman, before the next questioner continues, I would ask the Chair that in the interest of the decorum of these proceedings, that the President and First Lady be called and accorded the regard and respect due their offices and called by their full names and not by colloquial or familiar names in this hearing.

The CHAIRMAN. That is a good point. I don't think the Senator meant any disrespect by it, but we'll note that. I think we should proceed along those lines, Senator

Senator MOSELEY-BRAUN. Thank you.

Mr. GIUFFRA. Could we put up on the Elmo the December 29, 1995 letter that was sent by William Collishaw, General Counsel of the RTC, to James Neal, who is Executive Director of the Arkansas Supreme Court Committee on Professional Conduct.

Ms. BLACK, are you aware of this letter which refers to the Arkansas Supreme Court Committee on Professional Conduct for possible investigation, whether the Rose Law Firm had conflicts of interest with regard to its representation of the RTC?

Ms. BLACK. Yes.

Mr. GIUFFRA. If I could just read from the third paragraph of the letter. It's based on your report, am I correct, this referral?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. It says:

We believe that the report provides a sufficient indication of the existence of possible undisclosed conflicts of interest by the Rose Law Firm such that it raises concerns about the Rose Law Firm's compliance with the Arkansas Rules of Professional Conduct. We, therefore, are referring this matter to your Committee for further consideration and any action you deem appropriate.

Now, you are aware of this referral?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. And did you participate in the decision to make the referral?

Ms. BLACK. That decision was made by the General Counsel's Office, sir, not our office.

Mr. SWITZER. Sir, in the letter that transmitted out report to the Acting CEO, we did suggest that this be considered.

Mr. GIUFFRA. Why did you suggest to the Acting CEO that consideration be given to a referral to the Arkansas Supreme Court Committee on Professional Conduct?

Mr. SWITZER. Because of the potential which existed. I think Ms. Black could answer that better.

Mr. GIUFFRA. Set forth in your report.

Ms. BLACK. Yes.

Mr. GIUFFRA. Could you again describe briefly what the basis was for this referral to the Arkansas Supreme Court?

Senator SARBANES. The Arkansas who?

Mr. GIUFFRA. The Arkansas Supreme Court Committee on Professional Conduct.

Ms. BLACK. Our report disclosed I believe seven instances, Madison was one of them, in which we believed that we had evidence of possible or actual conflicts of interest. We referred that to the RTC, asked that they among other things consider referral to the appropriate authorities.

Mr. GIUFFRA. Ms. Black, am I correct that on March 2, 1994, Mr. Ryan asked the RTC IG to investigate the substance of a report that had been issued by the RTC Office of Contractor Oversight and Surveillance?

Ms. BLACK. Yes.

Mr. GIUFFRA. Could you just briefly describe the report issued by the RTC Office of Contractor Oversight and Surveillance stated?

Mr. SWITZER. It got to the issue of a conflict or potential conflict with respect to the Frost litigation.

Mr. GIUFFRA. Mr. Ryan asked your offices to go and do a further investigation of that matter; correct?

Mr. SWITZER. Yes, sir, he did.

Mr. GIUFFRA. You commenced your investigation, I believe it was on March 2; correct?

Mr. SWITZER. It would have been immediate upon receiving that request.

Mr. GIUFFRA. If we could put up on the Elmo the March 1, 1994 memos from Harold Ickes, the Deputy Chief of Staff at the White House, to the First Lady, and I will just read the first paragraph.

Attached is a copy of W. Neil Eggleston's 28 February 1994 memorandum to me regarding certain issues involving the RTC and the Rose Law Firm ["Rose"]. Attached to that memo are copies of the FDIC report dated 17 February 1994, concerning possible conflicts of interest regarding Rose's representation of the FDIC against Madison Guaranty, and the RTC's 8 February 1994 report concerning the same subject.

This February 8, 1994 report would be the report of the Office of Contractor Oversight and Surveillance; correct?

Ms. BLACK. No, sir, the FDIC—

Mr. GIUFFRA. No, the RTC February 8, 1994 report.

Ms. BLACK. I'm having a hard time following it. There were two reports, the RTC report and then a separate FDIC report.

Mr. GIUFFRA. Your investigation was based on looking into what the RTC report had found?

Ms. BLACK. We ended up looking into both because the FDIC initially retained the Rose Law Firm. The RTC then was successor in interest to that, so both were related.

The CHAIRMAN. You will have an opportunity to explore that in depth.

Senator Sarbanes.

Senator SARBANES. Senator Dodd.

Senator DODD. Just briefly, because I see my colleagues are here. I want to go over a couple of points, if I may, and then maybe I will turn to Mr. Ben-Veniste. I understand the Rose Law Firm, with regard to Madison, represented the RTC in one matter? Are you familiar with that?

Ms. BLACK. The Frost litigation, yes, sir.

Senator DODD. The Frost case. How would you characterize how the Rose Law Firm handled that case, the final outcome? Was it considered a good outcome by RTC standards?

Ms. BLACK. I have not reviewed that. My understanding is that Pillsbury Madison looked at that and I would defer to them.

Senator DODD. How about you, Mr. Switzer?

Mr. SWITZER. I would say the same thing, sir. I think this has been explored before in a sense of whether we got a good deal or not. I want to say, I believe the RTC decided that they had.

Senator DODD. They had done a good job?

Mr. SWITZER. That they had reached a settlement that they considered acceptable because the RTC accepted it.

Senator DODD. Well, do you remember what the amount of claims were they were talking about?

Mr. SWITZER. No, sir, I do not.

Senator DODD. Well, as I recall, and counsel can correct me, was it in the neighborhood of a \$1.8 million?

Mr. GIUFFRA. I think it was about \$1 million, sir.

Senator DODD. It was settled for that. So roughly a pretty good outcome is what at least we've determined or heard before, but you don't have an opinion on that?

Mr. SWITZER. I do not, no, sir.

Senator DODD. The reason I raise that obviously is because the whole issue of the conflict goes to the very essence and the question as to whether or not in fact the decision to hire the Rose Law Firm to represent the taxpayers in that matter in the Frost case would have been adversely affected as a result of a prior relationship.

Based on the outcome of the one case that they handled, suing the accountants in the Madison case, the outcome was a good outcome. Doesn't that go to the very heart of the question of whether or not the potential conflict produced any adverse results?

Ms. BLACK. I believe the Pillsbury report addressed the question of whether they felt the settlement was reasonable and answered in the affirmative. What we looked at was whether the Rose Law Firm had complied with the conflicts procedures and requirements that are in force within the RTC.

Senator DODD. I understand that. But you understand from our point here looking at this, obviously the big question would be not only from an ethical standpoint but broader than that. If in fact there had been some agreement struck here that was not in the best interest of the taxpayers, that in fact had not done a good job and in fact that potential conflict had somehow colored the settlement; that would certainly lend credence to the implications of the potential conflict. Do you understand my point?

Ms. BLACK. I understand it. I don't voice an opinion on it, although I would like to note at this point that Mr. Ben-Veniste earlier asked me a question which I misunderstood. When he asked—he asked about what effect records were having on some of the Pillsbury reports, and I answered that my understanding was that it had been reopened. Mr. Ben-Veniste, I believe, was referring to the Frost report, and my answer responded to the other Pillsbury report concerning Rose's liability—that referenced the tolling agreement and so forth. I have no knowledge whether the Frost issue has been reopened at all.

Senator DODD. OK. Let me just go back to the point I raised when I interrupted my colleague from Massachusetts, you recall I asked you about the Pillsbury report and the May 1st option. As I understand what we had here is the law firm has agreed to two extensions to the statute of limitation in the past. In December 1995, when they determined that the letter "g" on the bottom of

those documents referenced Mrs. Clinton, that they at that point then were aware of the existence of the firm's involvement or her involvement. So that when they drew that conclusion regarding the May 1st option, they did so with the awareness and knowledge that in fact the law firm and specifically Mrs. Clinton was involved.

Ms. Black, you responded by saying that the case was still open in a sense. But that's not quite the case if in fact they had drawn the conclusion in December, prior to the publication of the report that in fact the law firm had been involved; is that not correct?

Ms. BLACK. There were two reports, and I think that's what's causing the confusion, sir. I don't believe that option agreement was referenced or considered with regard to, if you will, the Frost report. It was the Frost report that—in which Pillsbury addressed conflicts. So I think they indicated that at the last minute they had made this discovery and kept one report open. I do not think it had anything to do with the other report.

Senator DODD. Not the Rose Law Firm report?

Ms. BLACK. The Rose Law Firm report is the one that is open, sir. It is the Frost report that, as far as I know, is closed. I do not know if that has been reopened.

In the Frost report—

Senator DODD. Let me turn to Counsel. They may have better information.

Ms. BLACK. I don't have the report before me.

Mr. BEN-VENISTE. On page 77 of the report addressing the Rose Law Firm, they concluded that they knew about the fact that Mrs. Clinton had been involved in the preparation of the option agreement. They concluded that on the basis of that, it would not be appropriate to draw any adverse inference that Mrs. Clinton knew how the deal had been structured or knew that there was anything untoward in the way that the deal had been structured as between McDougal and Ward. You will agree with that? Let me read it to you and see if it refreshes your recollection.

Ms. BLACK. It's probably best to refer to the report.

Mr. BEN-VENISTE. Reading:

The only solid evidence tying the Rose Law Firm to this acquisition is evidence of the innocent activity of participating in the drafting of the purchase agreement. While some evidence suggests that Hubbell could have had a role in the drafting of September 24, 1985 letter between McDougal and Ward, nothing proves he did, much less that he did so knowing it to be wrong. Similarly, while Mrs. Clinton seems to have had some role in drafting the May 1, 1986 option, nothing proves she did so knowing it to be wrong and the theories that tie this option to wrongdoing or to the straw-man arrangement are strained at best.

That is the reference—

Ms. BLACK. That is what the report says.

Mr. BEN-VENISTE. Let me go back a step in connection with the hiring of the Rose Law Firm. The Rose Firm was hired by the RTC to take on an ongoing case in litigation; isn't that so?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. And indeed, the case had been filed by a Mr. Gerrish, an attorney in—I believe, Little Rock. It was—

Mr. SWITZER. If I could, sir, I believe that at the time that took place, it might have been the FDIC.

Ms. BLACK. Yes, it was the FDIC.

Mr. SWITZER. That was prior to the existence of the RTC.

Mr. BEN-VENISTE. I correct myself. I believe that Mr. Gerrish was located in Memphis, Tennessee. But be that as it may, you are aware, are you not, that the FDIC had a problem with Mr. Gerrish's representation of the Government, because Mr. Gerrish at the same time was defending other parties in unrelated actions brought by the FDIC as well?

Ms. BLACK. That is what the responsible attorney told us.

Mr. SWITZER. That's what's contained in our investigative report.

Mr. BEN-VENISTE. Indeed, at that time the FDIC was concerned that everybody representing the FDIC be on one side of the V, as it were, in all this litigation, that they not be in a position to represent a defendant in one case and the Government in another case?

Ms. BLACK. Correct.

Mr. BEN-VENISTE. OK. Mr. Gerrish was asked to withdraw from the litigation or resign, I'm not sure which, to be fair to him, and the Rose Firm was selected to take over the ongoing litigation against Frost?

Ms. BLACK. That is correct.

Mr. BEN-VENISTE. Frost was the accountant for Madison Guaranty Savings & Loan?

Mr. SWITZER. The auditor, that's correct.

Mr. BEN-VENISTE. The auditor. The question was whether a recovery could be had against Frost in connection with the losses sustained by Madison Guaranty; correct?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. In that regard, picking up the ongoing litigation, a settlement was reached which—according to the Pillsbury report, which presumes that there was at least some conflict, and I quote from the report on Frost at page 2 to 3:

The conflict does not seem to have prejudiced the RTC as the Frost case seems to have been settled on reasonable terms.

You do not have any evidence to suggest that that conclusion was erroneous, do you?

Ms. BLACK. We—I would defer to them.

Mr. BEN-VENISTE. Well, I am asking you whether you have any evidence to suggest that that conclusion that the Frost settlement was appropriate is wrong.

Ms. BLACK. We did not undertake an investigation of the Frost settlement itself.

Mr. BEN-VENISTE. I take that as a no, you've no such evidence?

Ms. BLACK. No, we did not look at that.

Mr. BEN-VENISTE. I see my time is up.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Ms. Black, at the time that the Pillsbury firm issued its report, they obviously did not have Mrs. Clinton's billing records that were found at the White House; right?

Ms. BLACK. No, sir.

Mr. GIUFFRA. In fact, I would observe at page 66, the Pillsbury firm indicated that there may be evidence that Mrs. Clinton had something to do with the creation of the option, but that there was no timesheets available to indicate whether she, in fact, was or wasn't.

For example, in the absence of the billing records indicating Mrs. Clinton had at least 15 communications with Mr. Ward, Pillsbury really did not have all the evidence it needed to do its report; right?

Ms. BLACK. Clearly there is more evidence available now than there was then.

Mr. GIUFFRA. What I would like to do now is direct your attention to the option agreement that we now know was drafted by Mrs. Clinton. You were not aware of that fact at the time when you did your investigation; right?

Ms. BLACK. No, sir, we were not.

Mr. GIUFFRA. You obviously were not aware of the billing records indicating that Mrs. Clinton spent 2 hours preparing the option and also meeting with Mr. Ward on the date the option is dated, which is May 1, 1986. What I would like to do is put up Black Exhibit 3, which we went through yesterday, and you did an excellent job trying to explain the significance of this option. If you could do so again for the Committee, that would be terrific. This is a chronology that you prepared?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. This is an attempt—

The CHAIRMAN. Hold on, Counsel. Let's make sure Ms. Black has it in front of her so she doesn't have to strain.

Ms. BLACK. I appreciate that. I did find it, thank you.

Mr. GIUFFRA. Could you briefly take the Committee through your chronology, and indicate the significance of this option agreement and how the option agreement fits in with the other agreements, and in particular, the September 24 backdated agreement.

Ms. BLACK. Going through the chronology, the first event is on August 20, 1985. The Madison Financial Corporate Resolution is passed allowing Ward to act for them as an employee and agent in the purchase of IDC. Comparing it back to the billing records, we know that that was drafted by Mr. Thrash.

Mr. GIUFFRA. Of the Rose Law Firm?

Ms. BLACK. Yes. On September 3, 1985, there is an agreement between McDougal and Ward where Ward is to purchase property north of 145th Street for \$1.15 million, and Madison has a 270-day option to purchase it back from Ward for \$1.187 million.

On September 13, 1985, IDC and Madison agree to a purchase agreement and Madison Financial Corporation makes an assignment to Ward. On September 24, 1985, there is an agreement between Ward and Madison Financial wherein Ward agrees to purchase, on a nonrecourse basis, all of the property north of 145th Street, the water and sewer works and gives Madison Financial a 270-day option to purchase the property for a prorated amount of the note plus interest. It also gives Mr. Ward a 10 percent commission on commercial sales of property and 4 percent on other sales.

Mr. GIUFFRA. There was a backdated version of this agreement?

Ms. BLACK. Yes.

Mr. GIUFFRA. This is the second letter, and there's evidence that you have obtained indicating that this document was drafted—at least typed at the Rose Law Firm; correct?

Ms. BLACK. There is a backdated agreement that is a different version of that agreement, which excepts the 22½ acre parcel known as Holman Acres, from Madison's capability of exercising an

option. It also adds a \$35,000 option payment by Madison Financial to Ward.

We presented that agreement to the former secretary of Mr. Hubbell, who indicated that she thought she might have typed it, that it was her typing style and appeared to be similar to the type of her typewriter at that time. We do not know when that agreement was executed. In the litigation of *Ward v. Madison*, everybody agrees that it was backdated. Mr. Ward says he does not know when it was backdated. He says he does not know how it came to be drafted. He might have drafted it or caused it to be drafted, or then again someone else may have.

Mr. GIUFFRA. The difference between the two agreements is that the backdated agreement references the 22 acre parcel known as Holman Acres?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. That was ultimately the way for Mr. Ward to obtain his commissions for acting as the straw purchaser in connection with this transaction?

Ms. BLACK. That is what Mr. Latham testified to.

Mr. GIUFFRA. At the *Ward v. Madison* trial?

Ms. BLACK. Yes, sir. Next series of events is that on October 4, the IDC initial purchase transaction closes. Then you skip—

Mr. GIUFFRA. The Rose Law Firm attended that closing?

Ms. BLACK. Yes, sir. Then, during the next few months there are a series of what the examiners called "land flips."

Mr. GIUFFRA. What is a "land flip"?

Ms. BLACK. Well, Mr. Clark, I guess, referred to it as a sham transaction in which an individual who has no real interest in the property acts as straw purchaser and ultimately flips the land, if you will, to another purchaser, typically who also does not have much of an interest in it and profits—paper profits are recorded on the institution's books.

On February 25, 1986, a \$70,000 unsecured note is made by Madison Guaranty. That represents the—made by Ward to Madison Guaranty. That represents the amount which within a couple of days will be left on the IDC transaction. The IDC note itself was paid off on February 28, which was when Castle Water and Sewer closes. As of that date, the only property remaining to be held by Ward is the Holman Acres property. Those series of transactions paid off all but \$70,000 of the note that Ward had executed, so the parties agreed to stamp the original note "paid," and the \$70,000 note was in essence substituted for it.

Mr. GIUFFRA. On March 31, 1986, Madison Guaranty gave Mr. Ward \$400,000; am I correct?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. That was secured by Holman Acres and it was personal recourse to Mr. Ward?

Ms. BLACK. Yes, and it was a personal recourse note. The parties, again at the hearing of *Ward v. Madison*, agreed that that occurred around tax time, they said. Mr. Ward came in and said he needed his payments on the commissions and Madison had not made those.

Mr. Ward testified in a deposition according to a summary that I have seen, that the reason Madison Financial could not pay him

his commissions was that the regulators were in the institution at the time, and I believe he said "we were trying to keep those sorts of deals to a minimum."

Mr. GIUFFRA. They were concerned that the regulators would identify the sham transaction?

Ms. BLACK. That is what Mr. Ward said they were concerned about the regulators. He didn't elaborate.

Mr. GIUFFRA. Then the key date becomes April 7, when Madison Financial gives Mr. Ward a note for \$300,000?

Ms. BLACK. Yes. The parties also agreed that Mr. Ward quickly paid back \$100,000 on the \$400,000 personal recourse note that paid it down to 300,000. Just before April 7, both parties also agree that Mr. Ward came to Mr. Latham and said:

We've got a problem here. Yes, I've got my \$300,000, so I have the money that I need, but I am personally liable on this note, and I do not have anything back from you that indicates that you owe me money.

Therefore, Madison Financial executed——

Mr. GIUFFRA. That's the money he's owed from the commissions?

Ms. BLACK. Yes. Or that was money that he was given by Madison Financial—Madison Guaranty at least, in lieu of the commissions at that time. It was clearly tied.

Madison Financial then executes on April 7, a note to Mr. Ward that says we have borrowed \$300,000 from you. Again the parties all agree that no money changed hands. That note was merely intended to evidence an indebtedness by Madison Financial to Ward. And sort of in a general way was intended to offset the other note.

Mr. GIUFFRA. So as of May 1, what does Mr. Ward have and what does Madison have?

Ms. BLACK. At least immediately prior to May 1, Mr. Ward has \$300,000. He has a note on which he owes Madison \$300,000 personally. That note is also secured by the Holman Acres property. In addition, Madison Financial has indicated to Mr. Ward that it owes him \$300,000.

Again according to the testimony, at that point a couple of concerns arise. One; Mr. Ward says: these notes are offsetting. I could end up still owing you the money and if Madison Financial cannot pay me, then I question whether you're good on the \$30,000 notes. He expressed concern that he remained personally liable, I believe.

And on its side, Madison Financial was concerned because Mr. Ward could end up still with the property. If it paid him the \$300,000 he could pay off the note and keep the property.

At this point, the testimony of Mr. Latham and Mr. Ward diverges. Mr. Ward says at this point Madison decided——

The CHAIRMAN. Ms. Black, I'm going to ask you to suspend and not because I'm not interested. I think that you have really begun to set forth in a way, and I think we'll still have to go back over this. I haven't heard it said the way you have, which obviously speaks for your knowledge on this, but time has run out.

We have not gone the 15 minutes as of yet, although we could because there are four Senators, so I want to ask Senator Sarbanes if he thinks it's worthwhile asking her to pursue this or if he wants to exercise, obviously, his time. Yes?

Senator DODD. Mr. Chairman, before we even do that, I was going to recommend that we take a recess for about 20 minutes.

We have a new colleague from Oregon who was elected last week and his swearing-in ceremony will occur in 5 minutes. I thought it would be important for all of us to be there to welcome him.

The CHAIRMAN. It is now 12:25. Let's break until 2 p.m. for lunch and to welcome our new colleague. Senator Sarbanes, we can decide whether we want Ms. Black to continue or whether you want to examine.

Senator SARBANES. Why don't we do it on this side when we come back.

The CHAIRMAN. Certainly.

We stand in recess until 2 p.m.

[Whereupon, at 12:26 p.m., the hearing was recessed, to be reconvened at 2 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. We are waiting for Senator Sarbanes, but Mr. Ben-Veniste has some clarification questions so we'll go to him.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Ms. Black, let me see whether we can clarify one area of testimony given this morning with respect to the RTC's knowledge about Mrs. Clinton's work on the IDC matter. A portion of written interrogatories was read, and the suggestion was made that, in those interrogatories, Mrs. Clinton denied any work or knowledge of the IDC matter. Do you recall that earlier this morning?

Ms. BLACK. The line of questioning, yes.

Mr. BEN-VENISTE. In fact, the question that was responded to by Mrs. Clinton was whether she had any knowledge of Castle Grande. Do you recall that?

Ms. BLACK. I don't but I know that that's an issue, yes. I don't have the interrogatories in front of me.

Mr. BEN-VENISTE. In order to come back and clarify that with some degree of understanding, the RTC IG knew, when you conducted your investigation that Mrs. Clinton had represented Madison in connection with various aspects of what the Rose Firm referred to as the IDC matter; is that correct?

Ms. BLACK. Yes, in the Castle Water and Sewer, and the wet/dry issue, we knew that she had some involvement.

Mr. BEN-VENISTE. Right. You knew that internally the Rose Firm referred to that matter as the IDC matter and not the Castle Grande matter?

Ms. BLACK. I did not know until recently,

Mrs. Clinton indicated that within the Rose Law Firm, they referred to Castle Grande as only a one small segment of IDC. I did not realize that distinction occurred.

Mr. BEN-VENISTE. On the larger, more global issue of your knowledge of the fact that Mrs. Clinton worked on the IDC matter, that was something that she had performed some work, presumably of a supervisory nature, in connection with these two regulatory matters that you had mentioned?

Ms. BLACK. That is correct.

Mr. BEN-VENISTE. You knew, on the basis of the recap of fees from Madison, that that was reflected in documentary evidence?

Ms. BLACK. Yes. We primarily knew it because her name appeared on a couple of memoranda and/or transmittals, transmittal notes of those memoranda.

Mr. BEN-VENISTE. Let me go to the area that was pending when we broke for lunch, which was your preparation of a chronology of events.

Ms. BLACK. Yes.

Mr. BEN-VENISTE. There is one thing that I notice that was not included on the document. It's Exhibit 3 to your deposition.

Ms. BLACK. I have it.

Mr. BEN-VENISTE. That is the date on which the mortgage agreement was, or the note was signed by Madison and Ward with respect to Mr. Ward's interest in the property.

Ms. BLACK. Do you mean on the initial acquisition?

Mr. BEN-VENISTE. Yes.

Ms. BLACK. Yes, there are a lot of things that are not on this chronology. This chronology is what I prepared so that I could understand the issues that were being litigated in *Ward v. Madison* and to try to trace the money. There are several loans that aren't on here, and that is one event that is not on here.

Mr. BEN-VENISTE. In terms of imputing knowledge, and I guess part of what you were doing as an investigator was to determine whether it was reasonable for the Rose Law Firm to take the position that it did not know the details of Mr. Ward's acquisition of an interest in this property, particularly the nonrecourse loan.

Ms. BLACK. We are not trying to determine. We are just trying to report the facts.

Mr. BEN-VENISTE. You are trying to ascertain the facts so that someone else can come to a conclusion?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. In that regard, would you not say that it was important to know when the note was actually executed that reflects a nonrecourse position that Mr. Ward obtained?

Ms. BLACK. That is certainly a fact that we would report, and it is a fact that we did report in our earlier report.

Mr. BEN-VENISTE. Yes, but it is not reflected on this document.

Ms. BLACK. No, this is not a complete chronology and it was not done for that purpose. It was done so that I could understand the transactions in *Ward v. Madison*.

Mr. BEN-VENISTE. I'm not being critical and I'm not suggesting that this is all-inclusive, but would you agree that it would be important to know when that mortgage note was executed?

Ms. BLACK. It is certainly a relevant fact and one that we would report, yes, sir.

Mr. BEN-VENISTE. Would it not be the case, in fairness to people at Rose Law Firm who have given their testimony, that it could not be imputed to them that they knew there was a nonrecourse loan if indeed the loan was papered, the mortgage note was signed, after the closing?

Ms. BLACK. I think it was signed about 2 weeks after the closing.

Mr. BEN-VENISTE. OK. Going to the substance of what you were laying out in terms of your understanding of where the option agreement fit into things in the *Ward v. Madison* trial, that trial occurred when?

Ms. BLACK. That trial occurred in August 1988.

Mr. BEN-VENISTE. Is it correct that the Rose Law Firm represented neither party in that trial?

Ms. BLACK. That is correct; to the best of my knowledge, they did not enter in any kind of an appearance during the 2-day trial.

Mr. BEN-VENISTE. Ward was represented by a private attorney?

Ms. BLACK. Yes.

Mr. BEN-VENISTE. I believe that he was represented by Alston Jennings?

Ms. BLACK. I believe that is correct.

Mr. BEN-VENISTE. The interests of Madison were represented by whom, if you recall?

Ms. BLACK. I cannot recall. It was not anybody with the Rose Law Firm.

Mr. BEN-VENISTE. Was it a private firm retained by the Government as successor in interest to Madison?

Ms. BLACK. No, sir, the Government was not the successor in interest to Madison at that stage. The trial occurred when Madison was still a privately owned and operated institution. The intervention did not occur until February 1989, at which time FDIC took over the institution, and RTC became the successor of interest after the passage of FIRREA in the summer 1989.

Mr. BEN-VENISTE. OK. Let's use the Government sort of as successor in interest since the distinction between FDIC and RTC, I don't think, is pertinent for these purposes. The Government took over at a point where the appellate rights were still viable, and indeed pursued the appellate claims?

Ms. BLACK. That is correct. The Government intervened and removed the litigation to Federal court.

Mr. BEN-VENISTE. Indeed, prior to any retrial on those issues or subsequent litigation, the matter was settled?

Ms. BLACK. Yes, in 1993.

Mr. BEN-VENISTE. I think the Government received \$325,000 from Mr. Ward in settlement.

Ms. BLACK. They received \$325,000 from Mr. Ward and released Mr. Ward from any liability concerning any activities at Madison.

Mr. BEN-VENISTE. Going to the claims that were made during that trial, I take it you have given your testimony based on, at least in part, a review of the trial record in that case?

Ms. BLACK. That is correct.

Mr. BEN-VENISTE. OK. The interpretation that you have been providing to us before the break is one based on your review of the trial record?

Ms. BLACK. That is correct. I was trying to relate the position of the two parties in the litigation.

Mr. BEN-VENISTE. Was that something, an exercise that the RTC retained Pillsbury Madison & Sutro to do as well?

Ms. BLACK. I don't know that they retained them to look at the *Ward v. Madison* litigation.

Mr. BEN-VENISTE. Have you had occasion to review the reports of Pillsbury Madison & Sutro?

Ms. BLACK. I have reviewed two of them. I am not sure how many are out there.

Mr. BEN-VENISTE. Well, I am looking at a report which is dated December 19, 1995, and it's entitled: "A Report on Certain Real Estate Loans and Investments made by Madison Guaranty Savings & Loan and Related Entities, Prepared for the Resolution Trust Corporation by Pillsbury Madison & Sutro." Have you had the opportunity to review that document?

Ms. BLACK. I do not believe I have seen that one.

Mr. BEN-VENISTE. I see that my time is almost up and I do want to pursue some of the things that the Pillsbury firm found and compare them to your findings.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Chairman, I have a videotape I would like for the Committee to watch. It's very brief. I would like for Ms. Black to comment on it after she sees it.

[Videotape played; transcription as follows.]

Hillary Clinton's legal work for a land deal regulators describe as fraudulent. In May 1995, she told the Resolution Trust Corporation, "I don't believe I knew anything about any of these real estate parcels and projects."

But after billing records showed Hillary Clinton had at least 14 conversations with Seth Ward, the major player in the deal, Mrs. Clinton told Barbara Walters she knew the project by another name.

Mrs. CLINTON. When I was asked about it last year, I didn't recognize it, I didn't remember it. The billing records show I did not do work for Castle Grande. I did work for something called IDC, which was not related to Castle Grande.

REPORTER. That is not how Susan McDougal [the Clintons' former business partner] remembers it. It was always the same thing. As far as I know, IDC and Castle Grande were one and the same.

Later in another sworn statement, Mrs. Clinton said: "It is possible that I did once know something more that would be responsive to these interrogatories, but if I did, I do not recall it now."

[End of videotape; end of transcription.]

Senator FAIRCLOTH. Ms. Black, the point is this—and I wanted to make the point after the tape—these records were found just days after the statute of limitation expired against the Clintons. The RTC and Pillsbury did not have these records when making the decision about who should or might be sued. Furthermore, when Mrs. Clinton did provide answers to the RTC and Pillsbury, they were probably misleading answers.

This is the point: Castle Grande was known as IDC, and for the First Lady to be making this very fine and gossamery distinction, in my opinion, is misleading.

Ms. Black, you have testified that you are a factfinder. Looking at the billing records, do you sense that Mrs. Clinton was more deeply involved in Castle Grande than you first suspected?

Ms. BLACK. When I have used the term "Castle Grande," I did not know anything about this transaction until a couple of years ago. I first became familiar with it by looking at the report of the regulator. He referred to the entire transaction, all the tracts of land together, as Castle Grande and IDC interchangeably. That is the way that I have referred to them. In fairness, in looking at the Rose Law Firm bills, they refer to the transaction as IDC matter number 5.

I do not know how it was referred to inside of the Rose Law Firm, except that I know, having had testimony read here to me today, that other members of the Rose Law Firm have said that that distinction was made. I can't make any judgment about it.

Subsequent to that time, the regulators referred to it as Castle Grande/IDC. That is the way RTC typically refers to it, but I don't know about inside the Rose Law Firm in 1985 and 1986.

Senator FAIRCLOTH. Well, it seems very difficult for me to believe that, as smart a lady as the First Lady is, that she wouldn't have been aware that they were interchangeable terms.

With your knowledge, had these records been found before the statute of limitation and you were asked by RTC counsel for your recommendation, would it have been to get a tolling agreement?

Ms. BLACK. We do not make those recommendations. We find facts and report it to RTC, and RTC makes that decision. They don't come back and ask the IG what they should do.

Senator FAIRCLOTH. Based on your review, can we assume that Seth Ward was a party to these sham transactions, and that he knew he was being used as a straw man in the transactions?

Ms. BLACK. The regulators concluded that he was one of the insiders who was clearly involved in that sort of transaction. I see no reason to disagree with them.

Senator FAIRCLOTH. Let me ask you another question.

If this is the case, do you think it's possible that the First Lady could have had over 14 phone conversations while all this was going on with Seth Ward, discussing these trades, land trades, and not be aware that it was a sham deal?

Ms. BLACK. Again, I would not reach a conclusion. I would simply report the facts that conversations occurred.

Senator FAIRCLOTH. Mr. Chairman, I will give the rest of any remaining time I might have to Mr. Giuffra.

Mr. GIUFFRA. Thank you, Senator. Could we please put up on the Elmo chart 1 that we used with Mr. Clark, which is the chart showing the transaction. This is just to recapitulate and put us back into where we were in your chronology.

This chart reflects the fact that Madison gave Mr. Ward a \$1.15 million nonrecourse loan and Mr. Ward then obtained 650 acres from the IDC Castle Grande project, plus the sewer and water utility; is that correct?

Ms. BLACK. Yes.

Mr. GIUFFRA. The regulators found that Mr. Ward was used as a way to circumvent the so-called direct investment limitation?

Ms. BLACK. Yes.

Mr. GIUFFRA. If we could put back on the screen Ms. Black's Exhibit 3. Ms. Black, if I could just direct your attention to February 28, 1986. The sale of the Castle Water and Sewer aspect of the Seth Ward transaction closed; is that right?

Ms. BLACK. That's correct.

Mr. GIUFFRA. Mr. Ward engaged in a transaction and sold that portion of his property on that date; correct?

Ms. BLACK. Yes.

Mr. GIUFFRA. As of that date, all of Mr. Ward's 650 acres were also sold by him, except for the Holman Acres portion; correct?

Ms. BLACK. Correct.

Mr. GIUFFRA. As of February 28, 1986, the \$1.15 million note that Mr. Ward had outstanding to Madison was paid?

Ms. BLACK. Correct.

Mr. GIUFFRA. Let's put on the Elmo billing record 29016. I want to try to show the connection between the billing records and the dates of the transactions. This billing record reflects that Mrs. Clinton had a conversation of just under an hour with Mr. Ward on February 28th, which was the date when the Castle Sewer and Water transactions closed, the date when Mr. Ward sold back the 650 acres, and also the date upon which the \$1.15 million note was paid?

Ms. BLACK. It does reflect that. There was a .8-hour conversation between Mrs. Clinton and Seth Ward. It does not say what they talked about.

Mr. GIUFFRA. But the time is also billed to the IDC matter?

Ms. BLACK. Matter number 5, IDC, yes.

Mr. GIUFFRA. If you were doing a conflicts investigation, you would at least consider this phone conversation between Mrs. Clinton and Mr. Ward a reportable event?

Ms. BLACK. We would report that.

Mr. GIUFFRA. You would report the connection, that it occurred on the same date as the \$1.15 million Ward note was paid?

Ms. BLACK. We would report both the conversation and we would report the February 28 payment of the note.

Mr. GIUFFRA. Also the transaction involving the sewer closing on the same date?

Ms. BLACK. Yes.

Mr. GIUFFRA. Let's go back to Pat Black Exhibit 3. On March 31, Madison Guaranty gives Mr. Ward this \$400,000 note which is secured by Holman Acres and then that note is personal recourse; correct?

Ms. BLACK. Correct.

Mr. GIUFFRA. On the 7th Madison Financial gives Mr. Ward a note for \$300,000; correct?

Ms. BLACK. That is also correct.

Mr. GIUFFRA. I believe you testified earlier this morning that the \$300,000 was intended to compensate Mr. Ward as part of his commissions for engaging in the initial transaction which I put up on the screen originally?

Ms. BLACK. Both Latham and Ward testified at the hearing that that \$300,000 was to evidence a prior indebtedness to Mr. Ward, that being the \$300,000 in commissions, yes, sir.

Mr. GIUFFRA. That note was dated April 7, 1986?

Ms. BLACK. Yes.

Mr. GIUFFRA. I would like to put up on the screen billing record 20024. Have you seen this billing record before, Ms. Black?

Ms. BLACK. Yes.

Mr. GIUFFRA. This is to the IDC matter?

Ms. BLACK. Yes, it is.

Mr. GIUFFRA. There's a reference to a call from Mrs. Clinton on the same date that Madison Financial gives a note to Mr. Ward for \$300,000, which is related to the commission, for .20, which is approximately what, about 15 minutes or so?

Ms. BLACK. 12 minutes.

Mr. GIUFFRA. A conversation with a man named Don Denton?

Ms. BLACK. Yes.

Mr. GIUFFRA. Who is Don Denton?

Ms. BLACK. I believe Don Denton is Harry Don Denton, who was a loan officer with Madison Guaranty.

Mr. GIUFFRA. Was Mr. Denton a loan officer in connection with the March 21-31, 1986 loan to Mr. Ward?

Ms. BLACK. The March 3, 1986 loan to Mr. Ward has initials in the bottom left-hand corner, I believe. Those initials are HDD, which are the initials of Harry Don Denton. We have not asked him if he was—

Mr. GIUFFRA. But Mr. Denton had a connection with these loans to Mr. Ward?

Ms. BLACK. It would appear so, yes.

Mr. GIUFFRA. In doing your conflicts analysis, you would report this phone call to Mr. Denton and the fact that it occurred on the same date that Madison Financial provided a note to Mr. Ward?

Ms. BLACK. Yes.

Mr. GIUFFRA. Why would you list them both as reportable events?

Ms. BLACK. They are facts which may illuminate the nature of the transaction, which may be important to an ultimate decision-maker.

Mr. GIUFFRA. You would view that the factfinder could see a connection between the call to Mr. Denton and the fact that the note was issued to Mr. Ward on the same day?

Ms. BLACK. They could. We would have also asked Mr. Harry Don Denton if he was the HDD on the left-hand corner of that document, had we known.

Mr. GIUFFRA. If we could put up on the Elmo Mrs. Clinton's time record for May 1, 1986. That's 29026. This indicates that Mrs. Clinton had a conference with Mr. Ward, presumably that was a meeting; and that she had a telephone conference with Mr. Ward; and that she had a telephone conference with another person; and then that she prepared the option agreement.

Ms. BLACK. Yes.

Mr. GIUFFRA. That all occurred on the same date that the option is dated, which is May 1, 1986?

Ms. BLACK. That is correct.

Mr. GIUFFRA. At the last point when we had to take the break, you were describing the significance of the option. If you could just go back into your discussion, as of May 1, 1986, where does Mr. Ward stand in terms of his indebtedness, the money he has. Where does the property stand?

Ms. BLACK. As of that date, Mr. Ward has the \$70,000 unsecured note which represents the remaining amount outstanding on the initial Castle Grande loan. Mr. Ward has \$300,000 outstanding on his \$400,000 personal recourse note on which the Holman Acres property is the security.

Mr. GIUFFRA. He owes the bank the \$300,000 on that particular part of it?

Ms. BLACK. Correct. Madison Financial owes Ward \$300,000. At that point, the testimony of Mr. Ward and Mr. Latham diverges. Mr. Ward says that he doesn't know why the option of May 1 was executed. That option gives Madison Financial the right to purchase the 22-acre property for \$400,000.

Mr. Latham says that the parties became concerned that they still didn't have their transaction down right, the two \$300,000 notes could cancel each other out, Ward would still in effect not have his commission and he would end up with the land. What they intended was for Ward to have his commission and for Madison Financial to get the land. They executed an option agreement which was to have taken the place of the prior transactions.

According to Mr. Latham, Madison Financial was not able to exercise that option. Once again, this was during the time when the regulators were in the institution. They were in financial straights and they could not exercise the option so they could not consummate the transaction.

Shortly after that, Mr. Ward became—again, according to Mr. Latham—concerned that events were not progressing, that he was still personally liable on this \$300,000 note, that Madison hadn't been able to exercise the option. He came to Latham and said: this has to change, I don't want to be liable on this note. It's about to come due, and I am not going to pay you as long as you can't pay me the \$300,000 that you owe me.

Latham agreed with him, and then on June 6, 1986 Ward was released from personal liability on all of his notes that were still outstanding. I guess there was a subsequent \$70,000 note which had paid off the earlier one on which there was personal recourse. Then as Mr. Latham says, he made a mistake in not getting the \$300,000 note back from Mr. Ward.

Mr. GIUFFRA. On December 12, 1986 Mr. Ward quitclaims the Holman Acres property back to Madison?

Ms. BLACK. That is correct.

Mr. GIUFFRA. We will stop right here. Where does everything stand at this point?

Ms. BLACK. On December 12, 1986 there is a quitclaim deed back to the institution, which in effect satisfies both the \$400,000 note on which \$300,000 remained outstanding and the \$70,000 note. At that point, Madison took a loss of \$470,000 minus whatever the value of that land was. In addition, there remained outstanding the \$300,000 note—

Mr. GIUFFRA. That was owed to Ward?

Ms. BLACK. That was owed to Ward, so Ward has \$470,000 and a note showing that Madison Financial owes him \$300,000, and he sued on that note.

Mr. GIUFFRA. At that point, he's got \$470,000 in cash and then another \$300,000 as a note?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Thank you.

The CHAIRMAN. That note was the subject of the suit?

Ms. BLACK. That note was the subject of the suit, that note and various other offsetting claims.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Ms. Black, this chronology here, when was this prepared?

Ms. BLACK. I did that Sunday.

Senator SARBANES. I see. You just did this chronology?

Ms. BLACK. Yes, sir.

Senator SARBANES. For purposes of this hearing?

Ms. BLACK. No, sir, I was having a hard time understanding this transaction and I wanted to be able to understand it myself. Obviously I knew this hearing was going to come up; I had been notified that I was going to be called to testify and I needed to fully understand the transaction. I did this to help myself understand it. And keep track of the various dates.

Senator SARBANES. Did you do it just out of your memory?

Ms. BLACK. No. I did it using the documents. I was in my office using documents. At one point when I was trying to understand the case, there was a more extensive version of all the dates on which loans were made in and out of Madison on a blackboard. I put

some of that into computer format, the dates that I considered most significant.

Senator SARBANES. On the blackboard in your office?

Ms. BLACK. Yes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Black, I think you have before you a report of Pillsbury Madison & Sutro dated December 28, 1995.

Ms. BLACK. The one entitled, "A Report on the Representation of Madison Guaranty?"

Mr. BEN-VENISTE. Yes.

Ms. BLACK. Yes.

Mr. BEN-VENISTE. This was a report by Pillsbury Madison & Sutro, again made at the behest and paid for by the Resolution Trust Corporation?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. If you would turn to page 62 in the very last paragraph, Mr. Dover, who represented the seller of the IDC land and who has testified before this Committee in open session, stated that the principals as opposed to the lawyers put together the deal for the sale of the IDC property. Do you see that?

Ms. BLACK. The paragraph starting "Despite the absence of records?"

Mr. BEN-VENISTE. Yes, in that paragraph.

Ms. BLACK. Yes.

Mr. BEN-VENISTE. The last full sentence of that paragraph.

Ms. BLACK. "Dover says that the principal as opposed to the lawyers put together the deal."

Mr. BEN-VENISTE. Right. And he identified IDC's principal as Mr. Brick Lyle.

Ms. BLACK. Yes.

Mr. BEN-VENISTE. Do you have reason to challenge that conclusion on the basis of any of the information you've seen?

Ms. BLACK. No.

Mr. BEN-VENISTE. Then that takes us—when I say that you have seen, I mean, as you sit here today.

Ms. BLACK. Pardon?

Mr. BEN-VENISTE. I mean, as you sit here today. With respect to the matters that you relate regarding the trial in Arkansas of the dispute between Madison Guaranty and Mr. Ward, that matter was discussed at some length in the same report that you have before you, and I refer you to page 76. Are you with me?

Ms. BLACK. Yes.

Mr. BEN-VENISTE. You see that the general subject of *Ward v. Madison* is discussed there. I want to draw your attention to the last paragraph, where it says that: "In other respects, McDougal and Ward seem to have resorted to self-help rather than advice of counsel. Are you with me? The last paragraph on page 76.

Ms. BLACK. Yes.

Mr. BEN-VENISTE. In that regard, they identify certain of the transactions about which you've just referenced in your testimony.

Ms. BLACK. Yes.

Mr. BEN-VENISTE. For example, the \$400,000 from Madison Guaranty to Ward, the \$300,000 from Ward to Madison Financial and the \$70,000 running in both directions.

Ms. BLACK. Yes.

Mr. BEN-VENISTE. In taking that into consideration, that the principals resorted to self-help in terms of drafting up and making these agreements among themselves, do you have any evidence to provide to this Committee to suggest that any lawyer at the Rose Law Firm was aware of those transactions?

Ms. BLACK. I do not know whether they were aware or not. I have no evidence.

Mr. BEN-VENISTE. At the trial of the case, is it fair to say that the jury concluded that the version it would believe was Mr. Ward's version of events as compared with Mr. Latham's version of events?

Ms. BLACK. Yes, it did. At the trial of that case, however, the Government was certainly not a party. It was the institution which did not obviously come in and report the accurate state of affairs within that institution. For example, the un rebutted evidence presented to the jury was that this transaction which resulted in the series of what the regulator referred to as land flips, resulted in something approaching a \$3 million profit to the institution when in fact it would ultimately result in a \$4 million loss.

Mr. BEN-VENISTE. What I want to focus on is the role, if any, that this option agreement played.

Ms. BLACK. All right.

Mr. BEN-VENISTE. The land flips occurred later.

Ms. BLACK. Well, they had occurred before the litigation.

Mr. BEN-VENISTE. Before the litigation?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. But subsequent, I think we have already established that the Rose Law Firm, by anyone's analysis, had nothing to do with these papering or facilitating these land flips.

Ms. BLACK. Sir, that last transaction, that \$400,000 transaction involving Holman Acres, was described by the regulators as one of the land flips.

Mr. BEN-VENISTE. Well, was it a land flip?

Ms. BLACK. It was identified in the interim report as one of those series of insider transactions, yes, sir.

Mr. BEN-VENISTE. Help us to describe how this was a land flip.

Ms. BLACK. In the May 8th report, the examiner noted that—

Mr. BEN-VENISTE. I'm sorry, the May 8th report of?

Ms. BLACK. I am sorry, of Mr. James Clark, the examiner, that:

Ward still owns a small parcel which secures another Madison Guaranty loan which will be purchased by Madison Financial.

That's the last in a series of Ward transactions that he's talking about, and that is this parcel.

Mr. BEN-VENISTE. But he still owned that parcel?

Ms. BLACK. Yes. Then he said, goes on to say:

Ward apparently warehoused this land to reduce Madison Financial's investment and the attendant borrowing from Madison Guaranty.

The CHAIRMAN. Mrs. Black, take your time, please. You're under no obligation to either side to race through, so just take your time.

Ms. BLACK. Reading:

In this way, limitation on Madison Guaranty's investment and its service corporation are avoided.

He then goes on to say:

In fact, \$100,000 of Ward's remaining loan on the Castle Grande land appears to have been diverted to Madison Financial through a third party. By using a circuitous route, additional Madison Guaranty investment in Madison Financial was disguised as a loan to Ward.

According to the parties, this last transaction was, taking the May 1st option aside, but the loan which was secured by the property and the notes back and forth, was a method for Mr. Ward to take his commissions out of the institution. It involved highly inflating the value of that land, and it involved a lack of appraisal which was typical in all of these.

Mr. BEN-VENISTE. The theory of this conclusion was that this was a means of Mr. Ward taking his commissions?

Ms. BLACK. That this was a means of Mr. Ward taking his commissions as a part of, if you will, the final land transaction with the final remaining \$22,000 and transferring that over to Madison Financial.

Mr. BEN-VENISTE. The final—

Ms. BLACK. I'm sorry, 22 acres, sorry.

Mr. BEN-VENISTE. But you will grant me that in their analysis of the trial and all of the evidence before it, Pillsbury concluded on page 76—and I would like to get your comment on that—in the third paragraph:

If this view is accepted, then the option might be deemed a rather opaque and perhaps misleading means of documenting Ward's entitlement to commissions.

Are you with me?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. Quoting:

But as noted, this is a theory the jury in *Ward v. Madison* rejected and it suffers from a number of problems, starting with its inconsistency with the September 24, 1985 letter and going on to its dependence on Latham and Young, witnesses whom it would be easy to impeach.

Ms. BLACK. Yes.

Mr. BEN-VENISTE. Do you take issue with that conclusion?

Ms. BLACK. I think the witnesses at that trial, certainly on both sides, suffer from credibility problems, having made inconsistent statements at various times. It is impossible to go back and relitigate a case. It is clear from reading the transcript in that case, as I presume you have done, that the jury did not get an accurate description of what was going on inside that institution. RTC wanted to go back and relitigate that. They were not successful in doing so, but they attempted to do so for the next 4 years.

My point in looking at this, if we can step back again and remember that we're doing a conflicts report—

Mr. BEN-VENISTE. Right. I'll get to that in a second.

Ms. BLACK. My point in looking at this is that once again, Rose's involvement in that, knowing or otherwise—and I do not know, I have no evidence one way or another on their knowledge of the series of events, but even if it was a completely unknowing involvement—the fact is that they were potential fact witnesses in this *Ward v. Madison* litigation that RTC was attempting to prosecute.

RTC had expressly told the Rose Law Firm that it was concerned about that litigation. It did not know that the Rose Law Firm had a connection with the underlying transactions. It only knew that there was a familial connection between Mr. Ward and Mr. Hub-

bell. That was enough to raise concerns and that was enough for RTC to get assurances from Rose that Mr. Hubbell had no connection with the underlying transaction. But Rose itself did.

Mr. BEN-VENISTE. In connection with the 2 hours in conference and preparation of this option agreement and the regulatory matters that you've discussed; correct?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. In this 2 hours, I have looked at the option agreement and I'm sure you have—

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. With a view toward thinking, is this something that I could prepare in 2 hours. I'm sure you've come to the same conclusion, that this would be a difficult document, even if the whole 2 hours were spent and you had all the underlying materials, to prepare in 2 hours. Do you agree with that assessment?

Ms. BLACK. It is a four-page document. About one of those pages is made up of a description of the land. I believe what Mrs. Clinton said is that it would have been very difficult for her to have drafted that from scratch in a 2-hour period. Obviously, there are forms that are available, as we all know, for various legal transactions.

I have no idea what was used. I think it is reasonable to say it would be difficult to draft that from scratch in 2 hours, yes, sir.

Mr. BEN-VENISTE. The implication being that it was presented in some other draft form for review?

Ms. BLACK. I don't know.

Mr. BEN-VENISTE. One possibility?

Ms. BLACK. That is one possibility. Another possibility is that a form was used, a previous agreement where you change the names and plug in the description. I don't know.

Mr. BEN-VENISTE. Now to come back, if I may, for the final question that you alluded to, you did all of this in the context of reviewing the matter for potential conflicts violation, and that would be presented to some finder of fact. Who would that finder of fact be and what are the potential results of that?

Ms. BLACK. We are not finished, so we don't have—and we wouldn't reach the conclusion, anyway. It would be presented to the FDIC legal division, who would presumably share it with their outside counsel.

Mr. BEN-VENISTE. The possible ramifications?

Ms. BLACK. I don't know. They would look at it from a conflicts perspective themselves. The last time that we did a report, we suggested that they send it to their outside counsel to see if the facts that we found during the course of our conflicts investigation might also impact upon their review concerning legal liability, which we knew to be ongoing at that time. We might well do something like that again.

Mr. BEN-VENISTE. I'll come back to that. My time has expired.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

In connection with Mr. Ben-Veniste's question to you about a draft having been presented perhaps to Mrs. Clinton from which she then prepared the final option document, do you know whether the description in the option document is the same description that was in the backdated letter of September 24th?

Ms. BLACK. Yes, it is.

Mr. CHERTOFF. It is?

Ms. BLACK. Yes, it is, but there were two versions of that option agreement as well, and in one of those versions, that was not the description. Instead, the description was of a 6.6-acre parcel of land known as the Levi Strauss Building. One of the parties, I think it was Ward, in a deposition of which we've seen a summary, indicated that he discovered that the 6.6-acre description was wrong, which it clearly was. Ward did not own that property. The first 2 pages of that option agreement were retyped. Mrs. Clinton's initials on the word processing code, the "g" initial was contained on the 6.6 description. It was not contained on the 22½-acre description.

Mr. CHERTOFF. A portion of the description may have been retyped after the initial draft prepared by Mrs. Clinton?

Ms. BLACK. That is what Mr. Ward said and that appears to be the case from the document itself.

Mr. CHERTOFF. Then it was combined in the same document?

Ms. BLACK. Yes, sir.

Mr. CHERTOFF. It was signed May 1?

Ms. BLACK. Yes, sir.

Mr. CHERTOFF. May 1 is the date on which we have the 2 hours of work by Mrs. Clinton, which included the conference with Seth Ward, a telephone conference with Seth Ward regarding the option, a telephone conference with Mike Schauffler and a preparation of the option?

Ms. BLACK. Yes, sir.

Mr. CHERTOFF. I want to go back to the trial because the issue was raised about the jury verdict in that case, and I believe you quite succinctly made the point that if you review the trial record, the jury didn't have all the facts before it. Do you know what position Mr. Ward took in the case, in his sworn testimony about how the option was prepared?

Ms. BLACK. How the option was prepared?

Mr. CHERTOFF. Yes. Who prepared it?

Ms. BLACK. The option or the September 24 letter?

Mr. CHERTOFF. The option. I'll refresh your memory. I can give you a copy of the transcript. We can bring it down to you. At page 56, if you go to page 56, you'll see at line 13 it says:

Question: The option that they originally took out was for 6.6 acres, was it not?

Answer: I didn't prepare the option. The option that they originally prepared carried the land description for a building that was a Levi Strauss Building, which Madison purchased from me and sold to Mr. Fitzhugh.

Then he goes on down at line 23:

Question: And you don't recall why Madison Financial Corporation on May 1st took out this option to purchase tracks 27 and 28?

Answer: I would imagine that they wanted that property whether they repaid them or not. I don't know.

Is it your understanding that there was no evidence at the trial that contrary to Mr. Ward's suggestion that he didn't know how the option was prepared that, in fact, there had been discussion between Mrs. Clinton and Mr. Ward regarding the option?

Ms. BLACK. Are you saying was there any evidence to that effect presented at the trial?

Mr. CHERTOFF. Right.

Ms. BLACK. I do not believe there was.

Mr. CHERTOFF. Would you agree with me that the evidence that we have now before us based on the billing records discovered this January indicating that there was a telephone conference between Mr. Ward and Mrs. Clinton regarding the option is inconsistent with his sworn testimony that he didn't have knowledge about how the option was prepared and that he didn't prepare the option?

Ms. BLACK. Well, he says he didn't prepare the option. Then he says he doesn't know why it was prepared.

Mr. CHERTOFF. Yet we now have evidence that indicates that, in fact, he had discussion with the lawyer who prepared the option; isn't that right?

Ms. BLACK. Yes, he did.

Mr. CHERTOFF. This new evidence, which is contained in the billing records was unavailable so far as you know from reading the trial record to the jury at the trial? The jury at the trial didn't hear about this?

Ms. BLACK. So far as I know, that's correct.

Mr. CHERTOFF. As far as we know it wasn't available to Pillsbury Madison & Sutro when they prepared their report?

Ms. BLACK. They found out about the option at the last moment and therefore kept the report open to see what impact it might have on their analysis.

Mr. CHERTOFF. When they closed their report on December 28 under the gun, so to speak, they still didn't have the billing record that indicated not only that Mrs. Clinton had had some undefined role in the option, but that she had had specific conversation with Mr. Ward about the option?

Ms. BLACK. They did not have those records. They were not discovered until January.

Mr. CHERTOFF. They ran out of time basically before those records were discovered?

Ms. BLACK. Yes.

Mr. CHERTOFF. I want to go back to those issues that Mr. Ben-Veniste raised with you in the report. Because I think once and for all, we ought to get—in fairness to the people at Pillsbury, frankly, a notion of some of the things they wrote and some of the things they knew and didn't know.

If we go back to page 62, which is one of the pages that you were asked about by Mr. Ben-Veniste, it indicates, for example, that Mr. Dover said—I'll give you a chance to find that.

Mr. BEN-VENISTE. We're into the Pillsbury report?

The CHAIRMAN. Pillsbury.

Mr. CHERTOFF. Pillsbury report, page 62. It indicates there, for example, that Mr. Dover said that the principals as opposed to the lawyers put together the deal, and he identified IDC's principal as Mr. R.A. Brick Lyle.

Are you aware that among the recently discovered billing records is an entry for November 14, 1985 indicating that Mrs. Clinton had had a conversation with Mr. Ward regarding the purchase from Brick Lyle?

Ms. BLACK. Yes, sir. That appears in a billing memorandum that identifies the billing category as general matter number 4. I believe

the copy that I have has a circle around it with the handwritten notation "move to IDC matter number 5."

Mr. CHERTOFF. OK. That is, of course, information that the Pillsbury people didn't have. Footnote 265 indicates that Mr. Ward told the Inspector General—I guess that would be you or people in your office—that he does not remember the Rose Law Firm doing any legal work for Madison Guaranty on the Castle Grande transaction or on anything else. You would agree with me in light of your review of the billing records discovered after the report was completed that that statement by Mr. Ward is absolutely contradicted by these records?

Ms. BLACK. Yes, sir.

Mr. CHERTOFF. Mr. Ward's statement, upon which the Pillsbury report—

Ms. BLACK. If I may, it shows his recollection is not consistent with these records.

Mr. CHERTOFF. Without examining why he said what he did, whether it was merely a failure of memory or if it was a deliberate effort to mislead, his statements which were used and relied upon by the Pillsbury report, the statement that he does not remember the Rose Firm doing any legal work for Madison on Castle Grande or anything else, that statement is inaccurate based on what we now know from these newly discovered billing records?

Ms. BLACK. The records show that Rose did bill for that work, some work.

Mr. CHERTOFF. You would also agree with me that with respect to the conclusion on which Mr. Ben-Veniste is putting a considerable amount of weight—and this is now on page 76 of the report, it's the last paragraph where it says:

Beyond this, the theory that Ward or McDougal wanted to have the Rose Law Firm document the terms that [arguably] make Ward a straw man is hard to reconcile with the fact that in other respects McDougal and Ward seem to have resorted to self-help rather than advice of counsel.

Would you agree with me that one might reevaluate that conclusion if you became aware after the report was published that, in fact, Mr. Ward had obtained or had discussions with counsel, specifically Mrs. Clinton, on approximately 14 or 15 occasions during the time that these transactions were going on?

Ms. BLACK. We would report those contacts to Pillsbury or to the legal division and from there to Pillsbury. What effect that would have, sir, I don't know.

Mr. CHERTOFF. You would certainly agree with me that contrary to the conclusion written by the Pillsbury people—and I say this without criticism because they're not soothsayers. They were in the same boat we all were on December 28 looking for records. I mean, we didn't know where they were either, so we were in no better position than they were. Would you agree we have evidence in the billing records that are newly discovered that indicate on 14 or 15 or 16 occasions Mr. Ward did, in fact, get some advice of counsel or had a discussion with counsel, namely Mrs. Clinton?

Ms. BLACK. He was talking on 15 or 16 occasions to Mrs. Clinton.

Mr. CHERTOFF. That, again, is something that the Pillsbury people couldn't put in their report because it was withheld from them.

The CHAIRMAN. Ms. Black, because I think Mr. Giuffra went over it, and I found it interesting that on three different occasions in which transactions that you noted took place according to your little synopsis that you made to help you keep a flow of what took place; right, it was kind of an aid for yourself; right?

Ms. BLACK. Yes, sir. That's all it was.

The CHAIRMAN. On those three that you noted where there were transactions that took place in terms of properties being conveyed to Seth Ward and options, on February 28, 1986, indeed there was a billing from Mrs. Clinton as it related to IDC and Seth Ward, and that's a date that's one of them for eight-tenths of an hour?

Ms. BLACK. Yes, sir.

The CHAIRMAN. On April 4, 1986, there was a 12-minute conversation and that's a day of another transaction that took place on the same day?

Ms. BLACK. Yes, sir.

The CHAIRMAN. Then on May 1st there was a 2-hour billing time for the option and again, that was another day in which things took place as well as a conference?

Ms. BLACK. Yes, sir.

The CHAIRMAN. If an attorney in compiling and making this report indicated to the Pillsbury people that they didn't see any legal representation, obviously not having this, if they had this information, do you think they could have come to that conclusion?

Ms. BLACK. Again, we would report the facts and let them conclude, sir. The billing was to Madison, not to Mr. Ward.

The CHAIRMAN. But we have also the conversation with Seth Ward, the billings indicate that he was part and parcel and the other records indicate these were transactions that took place on these particular days?

Ms. BLACK. Yes, sir.

Mr. CHERTOFF. I guess it's fair to say, Ms. Black, that during this period between February 28 when they close the deal, they finally get into the last stages of flipping out the land from Ward to other people. From that point on, at the three of the four critical transaction dates, Mrs. Clinton is having a conversation. On the date that they close the loan with Ward, she talks to Ward. On the date that Madison Financial executes a note to Ward, she talks to the loan officer, Denton, and on the day that the option is signed, she not only works in preparing the option, but she has a conversation with Ward about the option. These particular entries, you will agree with me, whatever the conclusion is, are relevant evidence concerning the activities of a Rose Firm lawyer at critical stages of a land flip?

Ms. BLACK. Those are all conversations which we would report.

Mr. CHERTOFF. You said in response to Mr. Ben-Veniste's question that when the RTC engaged the Rose Law Firm—I think you said this—they were very concerned, among other things, with these particular set of transactions?

Ms. BLACK. They were either at the time of engagement or shortly afterwards. The RTC—various people within RTC and within the entity that succeeded Madison raised concerns about Mr. Hubbell's connection with Mr. Ward. One of the people in the institution expressed objections to the release of the Borod & Huggins report to

Mr. Hubbell because it was involved in the litigation where Madison and Ward—because that litigation was going on and because of the things that were contained in that report, they did not want that to go to RTC. Various people within—I'm sorry, to Rose Law Firm. There were four or five people within RTC that expressed strenuous objections concerning that, and the RTC attorney—actually, then FDIC—

Mr. CHERTOFF. Ms. Breslaw.

Ms. BLACK. Ms. Breslaw, in fact, contacted Mr. Hubbell and expressed those concerns, relayed those concerns and that resulted in a letter from Mr. Hubbell indicating that he did not represent Mr. Ward in connection with his transactions with Madison or his litigation with Madison.

Mr. CHERTOFF. But that was misleading because the firm had, in fact, represented or had been directly involved in these transactions as we now know.

Ms. BLACK. Again, from a conflicts perspective, we think that should have been disclosed.

Mr. CHERTOFF. Would you agree with me that this set of relationships, which involves direct involvement in the questioned transactions is even a much more powerful issue from a conflicts standpoint than a family relationship?

Ms. BLACK. I am sure that would certainly have been something that RTC would have wanted to know about.

Mr. CHERTOFF. Because that involves the firm's conduct.

Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Was the sanction on the conflicts inquiry that the firm shouldn't do the business? Is that the essential sanction?

Ms. BLACK. I don't know what type of sanction might flow out of that. The matter has been referred further. But again, our review was to—if you will, a compliance investigation to determine whether the Rose Law Firm had complied with the RTC requirements. That's what we were looking at.

Senator SARBANES. If someone doesn't do that, then they don't get the business; is that correct?

Ms. BLACK. One would expect so.

Senator SARBANES. OK. Mr. Ben-Veniste.

Mr. BEN-VENISTE. On that point, the fact is—I suppose you know this—that a memorandum circulated back at the time that the Rose Law Firm wished to get RTC business to advise the lawyers in the Rose Law Firm of the position of the RTC that they would not hire firms or attorneys who are on both sides of these disputes. Were you aware of the fact that a canvass was made at the time?

Ms. BLACK. I believe I have seen that.

Mr. BEN-VENISTE. Indeed, you were aware that the Rose Law Firm returned a portion of its retainer from Madison Guaranty at or about that time?

Ms. BLACK. I would have to look at the dates. I think you are right. I can't remember the precise dates.

Mr. BEN-VENISTE. I think perhaps you were quick to agree with the suggestion incorporated in the question posed by Mr. Chertoff that the option agreement was signed on May 1st. Would you take a look at it, please?

Ms. BLACK. I don't have it in front of me, sir.

Mr. BEN-VENISTE. Can we get a copy down there? Do you have both versions there?

Ms. BLACK. I have at least one version. One moment, please.

Mr. BEN-VENISTE. One version is notarized and the other is not. Are you with me, Ms. Black?

Ms. BLACK. Yes, I do have both versions here. The first version that describes the 6.6-acre property is dated May 1st and as far as I can tell from the document, was signed that day. The second one has a different description. It is the Holman Acres property description. It is also dated May 1st. There is an acknowledgment—

Mr. BEN-VENISTE. An editorial signature?

Ms. BLACK. That acknowledgment is dated May 5th.

Mr. BEN-VENISTE. The acknowledgment is that the parties came before the notary and signed the document on that day?

Ms. BLACK. That is correct.

Mr. BEN-VENISTE. That would lead you to conclude that while some version of this may have been prepared on May 1, which is consistent with Mrs. Clinton's time sheets, the actual and corrected version was signed on May 5th?

Ms. BLACK. That would appear to be true.

Mr. BEN-VENISTE. Second, I think Mr. Chertoff asked you at page 56 of the transcript of the *Ward v. Madison* trial without reading you the question whether he knew why the option agreement was entered into and that he could not tell. I would like you to look at the actual question, which is:

Question: And you don't recall why Madison Financial Corporation on May 1st took out this option to purchase tracks 27 and 28?

Answer: I would imagine that they wanted that property whether they repaid them or not. I don't know.

The question put to Mr. Ward was what was in Madison Financial's mind, not what was in his mind; isn't that so?

Ms. BLACK. Yes.

Mr. BEN-VENISTE. The question was not put to him as to what was in his mind?

Ms. BLACK. No. At that time he was an employee of Madison Financial.

Mr. BEN-VENISTE. I understand that, but the contract is between the two parties, the employee and the entity itself?

Ms. BLACK. Yes.

Mr. BEN-VENISTE. With respect to the question that was posed to you, you have now received information reflecting that Mrs. Clinton was apprised or had a conversation with Mr. Ward regarding a purchase from Brick Lyle. I would like to call your attention to that entry so it's clear on this record what that actually amounted to, and according to document DKSJ 029008, which is dated November 14, 1985—are you with me?

Ms. BLACK. No, I'm sorry, I'm not.

Yes, sir, I'm with you now.

Mr. BEN-VENISTE. That was for a grand total of half an hour?

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. There is no indication, is there, in any of the records that you have reviewed that Mrs. Clinton was in any way

involved in the structuring of that transaction which had closed some weeks before?

Ms. BLACK. We do not have the billing memoranda from that time, no, sir, we don't.

Mr. BEN-VENISTE. With respect to the 14 or 15 conversations with Mr. Ward that you were questioned about, I take it you did monitor the testimony in open session before this Committee last week where Mr. Donovan testified?

Ms. BLACK. No, sir, I was trying to prepare for my own.

Mr. BEN-VENISTE. I see. Well, let me summarize, and if I do so erroneously, I'm sure my friend, Mr. Chertoff will help me out.

Mr. Donovan testified that with respect to the vast majority of those contacts, they occurred at a time when Mr. Donovan was handling these two regulatory matters, the wet/dry matter and the sewer matter, which Ms. Clinton was supervising him and was the billing partner on. Is that consistent with your own review of Mr. Donovan's time?

Ms. BLACK. I have not broken it down that way, sir. It may well be. It would be fairly easy to figure out.

Mr. BEN-VENISTE. Second, Mr. Donovan testified that Mr. Ward, an older man with a somewhat prickly personality who wanted to speak to the partner in charge and that he was very happy with that arrangement, himself as a young associate at the time, and that Mr. Ward would call Ms. Clinton about matters that Mr. Donovan was working on. That's the substance of that. Would you have any reason to disagree with that interpretation of these telephone contacts between Mr. Ward and Ms. Clinton?

Ms. BLACK. I do not know why Mr. Ward called Mrs. Clinton or the other way around.

Mr. BEN-VENISTE. But you wouldn't have any reason to disagree with Mr. Donovan's sworn testimony?

Ms. BLACK. No.

Mr. BEN-VENISTE. To go on with the reference that Mr. Chertoff made at page 76 to page 77, it is correct, is it not—

Ms. BLACK. We're back on the Pillsbury report?

Mr. BEN-VENISTE. Yes, I'm sorry, Pillsbury report, page 77 that Pillsbury assumed for purposes of reaching its summary and conclusion that Ms. Clinton did indeed have something to do with the drafting of the option which we have been talking about here this afternoon; correct?

Ms. BLACK. That's correct.

Mr. BEN-VENISTE. It was Pillsbury's conclusion on the basis of the information presented to it that based on that information, in the absence of making the jump that somehow Ms. Clinton knew that there was something untoward in the initial arrangement between Mr. Ward and Mr. McDougal to evade the 6 percent direct investment limitation that it could not conclude that Ms. Clinton in providing whatever assistance she provided to Mr. Ward on May 1 did so with some bad motive, in derogation of some requirement or limitation?

Ms. BLACK. I believe what Pillsbury says is that: "While Mrs. Clinton seems to have some role in drafting the May 1, 1986 option, nothing proves that she did so knowing it to be wrong."

Mr. BEN-VENISTE. And that: "The theories that tie this option to wrongdoing or to the straw man arrangements are strained at best." That was the conclusion?

Ms. BLACK. That is what they wrote, yes, sir.

Senator DODD. I was going to make that same point.

Mr. Chairman, let me just say I appreciate our witnesses being here. These are professional people and you worked with the Government for some time, and I have great admiration and respect for people who put in these long hours. You don't anticipate spending a day in front of a Congressional hearing like this and basically it's to gather facts and information. The Pillsbury report obviously draws conclusions, and it's not your job—correct me if I'm wrong—to draw conclusions, but to provide information and facts upon which conclusions may be drawn by others as they draft reports; is that basically right?

Ms. BLACK. Absolutely.

Mr. SWITZER. Yes, sir.

Senator DODD. I appreciate the efforts on the part of some to draw you in to conclusions and I've watched you painfully try and avoid that and I respect that. I gather we're going to have a review since the tolling expires around the end of February. Is that right, March 1st? In light of where we spent most of the day today, it seems to me, with our two witnesses here in going back over to the extent that the billing records in some way would change some of the conclusions, we'll get an answer to that in a matter of days here now.

At least some of us here believe that in light of the fact that there was an awareness in mid-December about the fact that the Rose Law Firm and specifically Mrs. Clinton with the acknowledgment or recognition of this letter "g" on the document, and I heard Ms. Black say, at least as far as one of those conclusions, it's the second report and I think we're probably losing an audience here on this, but at least as far as one of those conclusions go, the Pillsbury report could base its conclusions with the awareness and knowledge of the fact the Rose Law Firm was involved and Mrs. Clinton specifically was involved.

I think a couple of points may be worth reiterating, Mr. Chairman, and one is that the report made extensive reference to the RTC IG's report. I guess it was 14 bound volumes of information that they had in which they drew their conclusions. I admire immensely the people who compiled all of that. Obviously, a significant amount of work went into that—

Ms. BLACK. Forty actually.

Senator DODD. How many?

Ms. BLACK. Forty volumes.

Senator DODD. Forty volumes as opposed to 14. Jay Stephens, the Republican appointee who was U.S. Attorney, is the one who put all this together, spent 2 years and a lot of people involved, I guess, \$4 million, 40 volumes of information and again, aware in mid-December prior to the issuance of the report and their conclusions here, and I'm quoting: "The record does not establish that the Rose Law Firm's work for Madison Guaranty involved misconduct warranting the institution of legal proceedings against it by the RTC." And they concluded that: "No action should be taken against

the Rose Law Firm and no further resources should be expended in investigating the Rose Law Firm."

I appreciate there is some additional questions here with regard to a second part of this report, and we will get an answer to that in a few days. I don't know the answer to it. It seems to me that there's been an effort here to try and somehow discredit the Pillsbury report.

Some people didn't like the conclusions. They would have loved it had there been some huge indictment included in it. There wasn't. I think it's important that those who are witnessing this hearing understand that a lot of people did a lot of work that contributed to these conclusions. They weren't reached lightly.

The Pillsbury study was not a partisan study. There were days and months spent on this. They had a lot of information to draw conclusions. Some people don't like those conclusions, and we maybe get some additions and nuances in light of some additional information. But frankly, I suspect that had there been a different conclusion, others would be trying to figure out some way they'd like to put some twist on it. But the fact of the matter is this is what they concluded.

I appreciate immensely your spending the time preparing for these hearings today and trying to shed some light on how you gather facts and what sort of information you have to look at, and I appreciate your position. Those of us on this side of the table, I guess, place more emphasis on the effects of certain actions, where you have to look at the actions themselves.

We look at that Frost case and see a good result. In fact, from the taxpayers' standpoint a good, strong result. I gather others have reached the same conclusion. We run the film backward and say well, you get a great result in that case, the only case which they're involved, so the potential conflict didn't affect the outcome.

That is not your job. You have to look at other questions here, but from our standpoint and a taxpayer's standpoint, the question comes were we disadvantaged somehow financially as a result of that potential conflict. And maybe you'll reach different conclusions, but based on what I've seen and what others have said, the amount that was secured as a result of that settlement was about as good as you might expect in that situation.

Again, that doesn't answer your job. Your question is to look at what was going on here and so forth and does that pass the ethics test that you have to apply. I'm sure you can also appreciate from our standpoint, we look and say, was there some great effect here on all of this, and at least I don't see it based on the amount that was achieved or received in the settlement on the Frost case.

With that, Mr. Chairman, I don't have any additional questions. I'll be glad to yield whatever time I have left. I see the red light is on. I apologize.

The CHAIRMAN. Before I recognize Mr. Chertoff and put this on our time, let me make several observations. First of all, I want to commend both our witnesses. Theirs is not an easy job and it's not easy to come here, and to resist the temptation that some of us would like you to make various conclusions. There's no doubt about it, but I think you both have testified in a most forthright manner, very knowledgeable on this and it demonstrates that there are peo-

ple who are dedicated to the job, do an outstanding job, and I say that you represent and epitomize that, and this is not easy and I understand that.

Second, as it relates to this Madison Pillsbury report, I think it's fair because I understand, and I remember when Mr. Stephens's firm was appointed and that was a hue and cry as it related—and indeed, there's testimony and some of it was very candid and straight forth from some of the witnesses at the White House that they were concerned about his partiality or impartiality, whichever way you want to view that and that was a very real concern.

The fact of the matter is that Mr. Stephens worked—and this comes from the firm's billing records 10 hours on this report in which thousands of hours went in. With respect to the conclusions that were made, this was not a report that exonerated the Rose Law Firm.

Indeed, page 8 it says the Rose Law Firm had a conflict under the Arkansas Model Rules of Professional Conduct in continuing with representation of RTC FDIC in the Frost case in light of the facts that A, Seth Ward was at the time a client of the Rose Law Firm. They didn't even have the benefit of seeing to the extent and to the billing and the work that was done. B, the Rose Law Firm had represented Madison Guaranty and Ward in the acquisition of Castle Grande property from IDC in which questionable loans had been made to Ward. And C, the Rose Law Firm had in its employ an attorney, Patricia Heritage, a former employee of Madison Guaranty who while at work at Madison Guaranty may have created minutes of board meetings that never took place and was a potential witness in the Frost case.

Indeed, when we review the Frost case, that much of the information that is now available never made it into the case for whatever reason. It appears pretty obvious that there was a concerted effort to keep those facts which were ordinarily, if there had been a spirited defense of any case, would have made their way in. How did this option even get into there, a key part of the case?

Mr. Chertoff has pointed out that there is no one making any assessment as it relates to the quality of the work of Pillsbury Madison & Sutro, but indeed these records were not available and these records, coupled with the other activities, shed quite a different light on it.

Finally, what they said as it relates to cost-effectiveness in bringing a suit that would not be cost-effective. It looked at some of the people. It didn't say that this is a clean bill of health, but there is a question about cost-effectiveness, and as it relates to the law firm, well, we'll see because now, this sheds some real light with respect to whether or not the Rose Law Firm in its handling, in its conduct of business should have been aware of what was taking place and what responsibility flows as it relates to partners who may or may not be undertaking activities that were inappropriate.

Clearly—and my colleague did indicate and that's the case, they will be making a recommendation with respect to this after they get an opportunity and after the RTC investigators have an opportunity to fully assimilate the new facts and new information and where it leads us.

In many cases, these facts lead us to other matters, which then continue to reveal facts so that we can get a picture.

What we're trying to do is get the picture, but certainly, this report can in no way be considered to be the clear all, the report that says there are things that were conducted that were done properly. It indicates that there were absolute breaches under the Arkansas Rules of Professional Conduct that the firm is not held to be blameless, and it is a question about cost-effectiveness.

And again, not to draw this out any longer, these records that were just recently revealed were not available, and they are part and parcel of the total fact picture that you need if you're going to make a complete conclusion based upon facts.

Mr. Chertoff.

Mr. CHERTOFF. Ms. Black, in fact, I think you had observed in an answer a short while ago that there are still some detailed billing records that are not available. In fact if we try to reconstruct and I know we have about 14 hours of time Mrs. Clinton billed, that is we don't have backup for, so 14 hours relating to IDC. We don't have detailed billing records for the work on that transaction in September, October, and November 1985 even as we sit here today; is that correct?

Ms. BLACK. We do not have the billing memoranda for September, October or November on matter number 5 IDC. There was a handwritten change to the January bill on Madison number 5 IDC which increased the billable amount attributed to Mrs. Clinton, and I believe if one divides her normal billing rate into that excess amount, it does roughly come to 14 hours.

Mr. CHERTOFF. Assuming, as anyone would like to, that these are—there wasn't any deliberate misbilling, there are clearly 14 hours of work for this transaction relating to this transaction that are undetailed, unaccounted for and as to which we still don't have records. We are still not in a position to make a final assessment because we don't have all the records.

But let me ask you this. You were asked earlier about what the result would be of learning about this conflict of interest, and I take it that if they had disclosed this conflict of interest up front, so to speak, they probably would not have been engaged to do the work for the RTC; right?

Ms. BLACK. I believe that April Breslaw indicated that as to some of the material that we had disclosed to her, that might have been the result.

Mr. CHERTOFF. That was, of course, less than we now have, which would be much more significant?

Ms. BLACK. Yes, sir.

Mr. CHERTOFF. Of course, it often happens that one discovers only after the fact that someone has concealed a conflict of interest, and at that point, you can no longer simply take the work away from them. They've done the work, but I take it then what happens is that the RTC considers, for example, whether to sue or recover the fees. Is that one option?

Ms. BLACK. I suppose they could do that.

Mr. CHERTOFF. If, for example, a firm misled the RTC, if there were misleading statements or false statements, that could be the basis for even some kind of criminal investigation, I take it?

Ms. BLACK. Could you repeat that, please.

Mr. CHERTOFF. If there were, for example, false statements made in connection with obtaining the work or misleading statements, there could be a criminal investigation relating to that?

Ms. BLACK. If there was a certification made to an agency and that certification was made knowing that it was false, yes, that could be a violation.

Mr. CHERTOFF. The point is that although it's true that before the fact when a conflict is revealed, the only result is to take the work away. After the fact, when the work has been done and a conflict is revealed, then there are other kinds of steps that can be taken. I take it back in 1993, for example, 3 years ago, if all this information had been available, whether, for example, to sue the Rose Law Firm or to try to recover fees or take some other kind of action, that decision would have been presented 3 years earlier than it is today, if they had all the facts back in 1993?

Ms. BLACK. I suppose so.

Mr. CHERTOFF. By the way, you have in your package a memorandum from our 1994 hearings to the First Lady from Harold Ickes dated 1 March 1994 re: Resolution Trust Corporation. I think it's in your package of materials.

Ms. BLACK. I think I've seen it.

Mr. CHERTOFF. It's got a 1720 at the top.

Ms. BLACK. Yes.

Mr. CHERTOFF. This was a memorandum which a couple of years ago, the Committee obtained when the Committee was examining the issue of contacts between Mr. Altman, who was then the acting head of the RTC and Deputy Treasury Secretary and the White House and in particular, the Committee was examining an event in early February 1994 when Mr. Altman was considering whether he ought to recuse himself from matters relating to Madison and was urged by Mr. Nussbaum to continue in place because, among other reasons, Mr. Nussbaum didn't like or was concerned about Ms. Kulka, who would have been the next in line.

I think his concern was that she had been very aggressive in the Keating case pursuing lawyers. And of course, this memo specifically relates to the issue of—evidently it's to the First Lady from Mr. Eggleston through Mr. Ickes relating to this very issue of conflicts of interest and how the RTC might deal with that. Do you remember the Keating case? What was it that Ms. Kulka had done with respect to lawyers in the Keating case that was the subject of Mr. Nussbaum's concern?

Ms. BLACK. I remember seeing Mr. Nussbaum's concern. I think he opposed her in some litigation, but I do not know exactly what that was about.

Mr. CHERTOFF. Do you remember if the case had to do with suing lawyers for their role in savings and loan—the failure of a savings and loan?

Ms. BLACK. I'm sorry, sir, I don't.

Mr. CHERTOFF. Finally, I would like to turn to one other thing. Mr. Ben-Veniste had raised the issue of people at the law firm having done work claiming that they didn't have any work or weren't associated with any of these transactions, and one of the transactions we've heard a lot about is that portion of IDC which has

to do with the mobile home development, Castle Grande Estates. I believe we may even have had some testimony from Mr. Thrash at page 279 of his hearing testimony that he had no involvement in any of these transactions like Castle Grande Estates.

I would like to put up for you, so you can maybe help us a little bit, two documents. First of all, there's a Plaintiff's Exhibit 9, also marked as SW1-028, which is a memo from Jim McDougal to Seth Ward dated October 7, 1985, which is at the early part of this initial IDC transaction. It says in the second—

The CHAIRMAN. Can we wait?

Ms. BLACK. It isn't up yet.

The CHAIRMAN. Let's get the witness a copy. Can we get it up on the Elmo, if you have it, please.

Mr. CHERTOFF. I'll read it: "Apparently there is some opposition from existing land owners at 145th Street to the placement of mobile homes on our property." And this relates, of course, to Castle Grande Estates, which is the mobile home development, which everybody agrees was Castle Grande. "I think their opposition merely arises from ignorance as to the plans. However, we do need to check to see if there is an existing Bill of Assurance on the property which would prohibit our planned use."

I guess we conclude from this that a Bill of Assurance is something that relates to the issue of whether you can use the property for this mobile home development.

I would like to put up Mr. Thrash's billing record and see if we can compare this with his statement that he had no involvement in the transaction such as the Castle Grande Estates. I think you have a copy of this bill.

Ms. BLACK. Is that DKS 28980?

Mr. CHERTOFF. It is, yes.

The CHAIRMAN. Mr. Chertoff, will you wait until they get a copy of it up there.

Mr. CHERTOFF. If you go down to the last entry, it's hard to read. I think it's October 7, 1985, and it's under T. Thrash. It says, "Meeting with Seth Ward. Review Bill of Assurances." Would you agree with me that this appears to indicate that, in fact, directly following upon Mr. McDougal's memo to Mr. Ward, that they had to take certain steps in terms of their ability to build on this mobile home development; that, in fact, Mr. Thrash met with Mr. Ward and reviewed the relevant documents. He seems to indicate that; right?

Ms. BLACK. There is a billing for "Meeting with Seth Ward. Review Bill of Assurances."

Mr. CHERTOFF. It seems there was involvement in this very specific transaction involving Castle Grande.

The CHAIRMAN. I'm going to say this to you, we're going to bring Mr. Thrash back in. He testified with some specificity in regard to his representation and then not representing them as it related to these matters, as well as when it came to the question of the closing. I found his testimony quite unusual as it related to he didn't know what took place. He would have you think that the title examiner did all the legal work.

One of the questions that I think Senator Faircloth raised, well, why were you there if you were there at this closing when this

rather substantial transaction took place. I think that was the one that involved over \$1 million when the initial IDC properties were transferred when Madison brought them so it just raises and I say this to you, it raises questions and I was not aware of this until you just put it up.

Senator SARBANES.

Senator SARBANES. I was just curious, Ms. Black, how do you know in response to Mr. Chertoff's question that the meeting with Seth Ward, which is indicated on this billing sheet as October 7, took place as Mr. Chertoff put it, immediately after this memorandum from——

Ms. BLACK. That's the date on the Rose Law Firm bill.

Senator SARBANES. Right.

Ms. BLACK. On the invoice, sir.

Senator SARBANES. Yes.

Ms. BLACK. On October 7, 1985, Mr. Thrash billed for "Meeting with Seth Ward. Review Bill of Assurances."

Senator SARBANES. Right.

Ms. BLACK. And my response——

Senator SARBANES. The question to you was immediately after the memo from Mr. McDougal to Mr. Ward, that Mr. Thrash had a meeting with Seth Ward. How do you know that?

Ms. BLACK. I don't, nor did I testify to that.

Senator SARBANES. I think you did and your answer to that question was——

Ms. BLACK. I believe I said in response on October 7, 1985, Mr. Thrash billed for—and then I read the bill.

Senator SARBANES. That's not how the question was put to you. I mean, the meeting could have been before the memo, couldn't it?

Ms. BLACK. Yes, and I did not intend to testify as to when something occurred.

Senator SARBANES. You have to listen to these questions very carefully.

Ms. BLACK. I did, and I answered it very carefully, and the answer was that on October 7 the billing was made. I did not agree with the question necessarily as posed. I simply read back a line on a bill.

Senator SARBANES. And did you say that your inquiry was 40 volumes?

Ms. BLACK. There were 40 bound volumes, books—we call them books, divided into four volumes.

Senator SARBANES. Pardon.

Ms. BLACK. 40 of these.

Senator SARBANES. That was whose report?

Ms. BLACK. The RTC Inspector General's report. We looked not only just at Madison. We looked at all representation by the Rose Law Firm on behalf of the RTC, 21 or 22 institutions.

Senator SARBANES. And were those reports made available to Pillsbury?

Ms. BLACK. Yes, sir.

Senator SARBANES. That was part of the work material they had in preparing their report; is that correct?

Ms. BLACK. Yes, sir.

Senator SARBANES. Did your report also have a lot of backup material to it?

Ms. BLACK. Yes, sir.

Senator SARBANES. How voluminous was that?

Ms. BLACK. Most of the 40 bound books were exhibits. All but four, so 36 of the 40 were a compilation of documentary evidence.

Senator SARBANES. How long did it take to prepare that report?

Ms. BLACK. The investigation began in March 1994. The report was issued August 3, 1995. A substantial delay, about a 9-month delay occurred while we were litigating over the issue of access to a client list.

Senator SARBANES. How many people worked on that?

Ms. BLACK. I think about four investigators—roughly four to five at any one time were doing the basic investigatory work.

Senator SARBANES. Four or five investigators working full-time over an 18-month period?

Ms. BLACK. I don't believe they worked full-time on it, no, sir. They worked over a period of 18 months, but not full-time.

Senator SARBANES. Of course, Pillsbury Madison picked up from there. Their study, as I understand it, cost the RTC \$3.8 million?

Ms. BLACK. I have heard that figure. I don't know.

Senator SARBANES. Senator Dodd.

Senator DODD. Just briefly, Mr. Sarbanes. I had raised the question earlier whether or not the settlement in the Frost case was a good settlement. I think both witnesses indicated they weren't necessarily disagreeing with that, but you weren't drawing a conclusion about it yourselves or you weren't aware whether or not it was considered a good settlement or not. Is that fair, or is there any change in that?

Ms. BLACK. We don't reach conclusions.

Senator DODD. Let me, if I can, Mr. Chairman, because I would like to insert in the record the memo from April Breslaw, the senior attorney to Mr. Jacobs and William Roelle, the Special Counsel to the RTC. They go in some length here, several pages analyzing the settlement and conclude—in fact, they recommend, the last line says: "I recommend that we settle this matter by accepting the carrier's \$1,025,000 offer." They go on at some length, Mr. Chairman. They think the present value of our settlement was \$1,050,000 received in 6 months is \$1,014,000, but the present value is \$1,050,000.

Then they say: "To date, we have incurred approximately \$150,000 in legal fees, \$40,000 in expert fees. Final preparation and trial of this matter is likely to add about \$75,000 in legal fees and \$10,000 expert fees to our cost. Accepting the carrier's offer would therefore enable us to save about \$85,000." Therefore, they conclude that the settlement figure was a good figure.

I raised the point earlier I think that's a very important piece of information, and you may recall, Mr. Chairman, earlier that it was April Breslaw that testified that it was the RTC, not the Rose Law Firm, that made the decision to accept the settlement offer and this is the memo, in effect, which confirms that and lays out why it's a good proposal. Again, I think this is the one case they had with the RTC. It goes to the heart of the question of whether or not the taxpayers got a good deal as a result of their efforts, and this

memo from the RTC certainly corroborates that conclusion. I think it's important at this particular point to include that in the record, so I would like to do that with your permission, Mr. Chairman.

The CHAIRMAN. Sure. We're taking everything in the record.

Mr. BEN-VENISTE. With respect to one matter so the record is very clear—

The CHAIRMAN. Can I inquire just for a moment, Mr. Ben-Veniste, and I'll add any time back in. After Mr. Ben-Veniste gets done with his questioning, do you think you need a 5-minute break, either of you?

Ms. BLACK. How much longer are we going?

The CHAIRMAN. I don't think we're going too much longer. You know, another half hour. OK? We'll keep going. Go ahead, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman. Two matters, and then I'll see whatever time, if any, remains back.

With respect to the matter of whether the option agreement was considered in the *Ward v. Madison* trial, you were not suggesting, were you, that that option agreement was not an exhibit in the trial and discussed. We've already covered that.

Ms. BLACK. I was not—I'm sorry?

Mr. BEN-VENISTE. You would not suggest that the option agreement was ignored in the *Ward v. Madison* trial?

Ms. BLACK. No, it was at issue in the trial.

Mr. BEN-VENISTE. Also, out of fairness, you were asked about Ms. Breslaw, what she might have done if she had additional facts, and you referred to her testimony and the question about what she would have done would have been on the issue of whether there was a conflict of interest that would have precluded the Rose Law Firm from the representation of the RTC in the Frost litigation. That we are on the same page here, this is what we are discussing?

Ms. BLACK. OK.

Mr. BEN-VENISTE. The question that was put to Ms. Breslaw on page 39 of her transcript by Mr. Chertoff, and I'll read it:

Now, the nature of this transaction as it was described in the Federal Home Loan Bank Board examination was that at the same time that the bank was purchasing part of the property, they were giving Ward the money to purchase the rest of the property and taking an option to get it back later. And all of that paperwork of that fictitious transaction which was described essentially as a fraud in the bank examination report, all that paperwork regarding that transaction was handled by the Rose Law Firm. Would you agree with me that had that been brought to your attention, it would have been absolutely ridiculous to hire the Rose Law Firm to represent the RTC in a case involving the independent auditors?

That was the question put to Ms. Breslaw. That question assumes some facts that you haven't seen; isn't that so?

Ms. BLACK. It was a fairly long question.

Mr. BEN-VENISTE. In fact, no one has seen facts that would support all of the paperwork of that fictitious transaction which was described as a fraud in the bank examination report, all of that paperwork regarding that transaction was handled by the Rose Law Firm. Well, that isn't the case, is it?

Ms. BLACK. I do not believe that all the paperwork—if what you're asking me is, was all the paperwork from that closing and the subsequent flips that were criticized handled by the Rose Law Firm, I have seen no evidence to indicate that was the case.

Mr. BEN-VENISTE. And nothing regarding the nonrecourse loan made to Mr. Ward was prepared or shown, much less shown to the Rose Law Firm according to the evidence that you have seen?

Ms. BLACK. The funding of the loan postdated the closing itself. I do not know whether Rose saw it or not.

Mr. BEN-VENISTE. The question put to Ms. Breslaw contained a number of facts that are not supported by the evidence so far as you know it.

Ms. BLACK. That is correct.

Mr. BEN-VENISTE. The question about whether or not to hire a firm back in the 1980's given the needs that the RTC had to have quality representation in important matters was one which was dealt with on a case-by-case basis?

Ms. BLACK. Yes. RTC—under FIRREA, RTC was supposed to go out and hire private contractors to do most of its work. That includes litigating cases, handling assets, and it did so on a case-by-case basis. There would typically be an agreement entered into with a law firm, and then individual assignments would come under that agreement.

Mr. BEN-VENISTE. As Senator Dodd has pointed out, the proof of the pudding is really in the eating here in terms of whether the value received by the Government, the RTC, and the efforts made by these private law firms is demonstrated in the results that they got. And here, in addition to what Senator Dodd has alluded to by the RTC contemporaneously reviewing the proposed settlement agreement, we also have the benefit of the separate and independent analysis that the Pillsbury firm made of the same issue. Have you seen their conclusion?

Ms. BLACK. In the Frost report?

Mr. BEN-VENISTE. Yes.

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. There at page 14, Pillsbury's report on Frost, Pillsbury concluded:

It appears from the transcripts that counsel on all sides were competent and adequately aggressive in pursuing the interests of their respective clients. In particular, the Rose Law Firm did not appear to be less than aggressive, and it was reasonably effective in pursuing legal theories and asserting the interests of the RTC.

Do you have any reason to contradict that assertion?

Ms. BLACK. Sir, we have not done nor are we qualified to do a review of the PLS work. As Senator Dodd also commented, we have tried to avoid making conclusions all day long.

Mr. BEN-VENISTE. I'm not asking you to make a conclusion. I'm asking you whether you have any evidence that would refute that conclusion?

Ms. BLACK. I have not attempted to gather any such evidence.

Mr. BEN-VENISTE. Nothing further.

The CHAIRMAN. I'm going to ask because there's been some question with respect to the time that the Rose Law Firm did work with respect to a matter put up on the Elmo, the October 7, 1985 letter to Seth Ward from Jim McDougal. I have to note that Seth Ward is working for Mr. McDougal. Go down to the middle of the second paragraph. It says, "however"—I just want to note this—it reads: "We do need to check to see if there is an existing Bill of Assurance on the property which would prohibit our planned use."

There's a question, we've got to check to see if there's an existing Bill of Assurance on the property which would prohibit our planned use. Ms. Black, you see that letter?

Ms. BLACK. Yes, sir.

Senator DODD. What's a Bill of Assurance?

The CHAIRMAN. Apparently it relates to land use, whether or not it's a permitted use of the property.

Senator DODD. Is that a uniquely Arkansas thing?

The CHAIRMAN. That would be an appropriate description of whether the zoning comports. It would be the same thing.

Senator DODD. Do you need to file one of these things?

The CHAIRMAN. You would have to have your attorney or title assurance or whoever does the appropriate review of those matters.

Obviously, in land use cases, generally, it is the attorney, generally. Many times attorneys will call in real estate specialists who will check the records, check the zoning maps, go down to either the town hall or the city hall to ascertain if that use is appropriate. In this case, if it's a planned use of a trailer park or trailer homes, whether or not that property would be in accordance. The use would be in accordance with what the zoning is.

Senator DODD. That is, the seller would—the person who owned the property would—

The CHAIRMAN. Well, the person who owned it or was intending to develop it. Obviously, if someone were going to develop it, they would want to know whether or not that was an assured use, and I think that's the terminology—

Senator DODD. They get that from a planning or zoning board?

The CHAIRMAN. Your attorney would ascertain again from the particular municipality who had jurisdiction over the zoning. In some cases, that would be the local town or the village or the city. There might be State requirements, but certainly your attorney in many cases would do that or he would bring in his land use expert and call.

I point out, the only reason I do this is because we get to splitting hairs. I don't mean to be splitting hairs here, but on October 7, obviously, Jim McDougal said we have to take a look and see whether or not this would be a use that would be permitted. In this case, he said, "Assurance on the property which would prohibit our planned use." He wants to know whether or not the planned use is one that is appropriate with the property.

On the same day, October 7, 1985, we see Mr. Thrash's Rose Law Firm billing, "Meeting with Seth Ward. Review Bill of Assurances." Look, I don't care what side is attempting to make the point. It is rather obvious from this that Mr. McDougal raised the question to Mr. Ward, and he said in this letter we have to find out whether this use is prohibited or is permitted before we go forward.

On the same day, thereafter, and I say thereafter because it's a natural consequence. One would assume that either Seth Ward checked before and said by the way, I did check and it happens to be they were in conversation on it or thereafter more logically, but not necessarily, but certainly on the same day, you have a billing record, totally independent, obtained from a different source, from the Rose Law Firm billing records and they say, "Meeting with

Seth Ward. Review Bill of Assurances." I think a logical conclusion is they called upon Seth Ward to make this ascertainment.

Senator DODD. It could have gone the other way. They could have had the meeting and said this is an issue and then you had Ward saying to McDougal we have to check on this.

The CHAIRMAN. The point is, contrary to what has been indicated, Mr. Thrash did do work, was called upon and indeed, I think it's rather logical that the questions raised by the boss to the employer, Seth Ward, does ascertain this. The billing records indicate he does have a consultation with the Rose Law Firm. It's just logical, and if we're going to begin after this kind of thing, and I think sometimes we do the same thing on both sides, but it's just a logical conclusion, and I just had a comment because it was raised, and I thought I would comment. I don't see anything unusual. I think it would be rather unusual if the boss said hey, look, there's a question about the use of this property, and you better see if there's an existing Bill of Assurance on the property which would prohibit our planned use. I guess the Bill of Assurance, which would stop them from using it as planned, he went and did it. He had a conference on the same day.

Senator SARBANES. Mr. Chairman, you indicated that you were going to call Mr. Thrash back to sort of ascertain this, as I understand it?

The CHAIRMAN. There are a number of points. Not only this—

Senator SARBANES. I just note that both of these documents were in the Committee's custody before Mr. Thrash came in, and he could have been asked about this when he was here.

The CHAIRMAN. Senator, if we were not aware of this, and go over the depositions, some of this information as it relates to testimony that has been given or is given, comes up. If we don't have to call them, we can attempt to avoid that. But Senator Murkowski asked some questions that Mr. Thrash answered in one way, maybe as an explanation that relates to that, I don't know, but it certainly is a possibility.

Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Ms. Black, if we could put up Pat Black Exhibit Number 3, which is your chronology, just conclude it by looking at the last entry.

The CHAIRMAN. She'll never make a chronology again.

Ms. BLACK. This is the second time I have done it. I can't believe I did it twice.

Mr. GIUFFRA. Just the very last entry; it indicates that on September 30, 1993, Mr. Ward and the RTC settled the Ward/Madison litigation; that Mr. Ward paid \$325,000 and then he received a full release for possible claims that might be against him for his involvement in these transactions; correct?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. At the end of the day, how much money did Mr. Ward walk away from this with?

Ms. BLACK. At that stage, Mr. Ward had the \$370,000 in note proceeds. Mr. Ward also drew down the full escrowed amount that had been posted while they were litigating the case; that's roughly \$770,000. Then he paid back \$325,000 so—

Mr. GIUFFRA. I believe in your deposition you testified that he walked in the end with \$455,000?

Ms. BLACK. That should be about right.

Mr. GIUFFRA. Plus he had the release from liability?

Ms. BLACK. Yes.

Mr. GIUFFRA. If we could put up on the Elmo Mrs. Clinton's supplemental interrogatory number 64—I believe you have a copy of it, you have seen this interrogatory; correct?

Ms. BLACK. It isn't there yet.

Mr. GIUFFRA. But you've seen it previously?

Ms. BLACK. Yes.

Mr. GIUFFRA. I'll read it into the record—

The CHAIRMAN. Well, wait a second.

Ms. BLACK. Interrogatory 64?

Mr. GIUFFRA. Yes. And this interrogatory asks Mrs. Clinton to describe the work that she performed with respect to Madison Guaranty matter number 5, which was the IDC matter. Mrs. Clinton's sworn interrogatory states:

I believe that the work I did on this matter consisted primarily of supervising research concerning legal issues, such as whether it would be legal to open a tasting room for a proposed brewery, in light of the fact that the land was, arguably, located in what had once been a "dry" township, and other questions relating to the provision of water and sewer service by a utility which was located within the IDC PROPERTY.

If we could put back on the Elmo your chronology. Mr. Benveniste indicated that according to Mr. Donovan, that Mrs. Clinton had done most of the work with him supervising legal research, and that's what Mrs. Clinton says in the sworn interrogatory. I just want to focus on the three entries that you focused on previously. First of all, in February 28, 1986, that was the date when the Castle Sewer and Water transaction closed and when the IDC loan was gone except for the Holman Acres portion, and the \$1.15 million note by Ward was paid.

If we could put up on the Elmo 29016. That's the indication that on February 28, 1986, Mrs. Clinton had a conversation of just under an hour with Mr. Ward, and there doesn't appear to be any entries by Mr. Donovan in or around that time period. That's February 28, 1986.

If I could turn to the next date that you identified, which would be the April 7, 1986 time frame, that's when Madison Financial issued a note to Mr. Ward for \$300,000. On that date we had a call for 12 minutes, and we can put that up. It's 20024. That's a call between Mrs. Clinton and Mr. Don Denton. You identified him as a Madison loan officer, and he was involved in giving loans to Mr. Ward. I would observe that again we don't see any entry involving Mr. Donovan on April 7, 1986.

The last billing entry that we have discussed would be the option, and if we could put that up on the Elmo. Again we have Mrs. Clinton billing 2 hours on May 1, 1986, which is the date of the option, telephone conference with Seth Ward regarding option, telephone conference with Mike Schaufler, and then prepare option. Again, no time being billed by Mr. Donovan.

Mr. SWITZER. What was the number of the last one?

Mr. GIUFFRA. 29026.

Ms. BLACK. I have looked at all of those billing memoranda. On the first one dealing with time in February and March, while there is no time billed by Mr. Donovan on the 28th, he does bill for February 16 and March 4.

As to the April billing memorandum, though, the only entry there is by Mrs. Clinton, and I don't think there were any entries by Mr. Donovan on the third one, either.

Mr. GIUFFRA. It doesn't appear that Mr. Donovan was involved with Mrs. Clinton with regard to these communications with Mr. Ward that occurred on the dates that appear to be critical with regard to the transactions involving Mr. Ward?

Ms. BLACK. Well, on the last two he does not bill any time during that time period. On the first one, the February 28, he does not bill time on that day, but he does bill both prior to and subsequent to that day within a roughly 1-month period.

Mr. GIUFFRA. The Committee has identified approximately 29 hours of work that Mrs. Clinton did on the IDC matter; and I believe Mr. Donovan when he testified said he did approximately 22 hours of work, 7 hours less than Mrs. Clinton did on the IDC matter. Mr. Donovan testified that he believed that Mrs. Clinton had worked with Mr. Ward on the legal research that Mr. Donovan was doing, was acting as the point person. Do you think it would make sense that the partner would be doing 29 hours of work communicating with the client—

The CHAIRMAN. No. I'm not going to let you ask her that.

Mr. GIUFFRA. You are aware of Mr. Ward's sworn statement of February 29, 1994. Have you seen that? It is an interview with a special agent of the RTC Office of Inspector General.

Ms. BLACK. I'm sure I have if it's one of our interviews.

Mr. GIUFFRA. I will read that into the record; Mr. Ward's sworn statement:

I do not recall speaking to any lawyers concerning water issues in that project and certainly had no discussions with anyone concerning delivery of water services off site. I have no knowledge of ever discussing at all any issues concerning a brewery, liquor licenses or a question of whether a particular jurisdiction was wet or dry.

You are familiar with that testimony?

Ms. BLACK. Yes.

Mr. GIUFFRA. You would, at least, in preparing your conflicts analysis, you would flag the apparent discrepancy between Mr. Donovan's testimony and Mr. Ward's testimony?

Ms. BLACK. We would note both facts and we would have noted the bills, what the bills said if we had had those.

The CHAIRMAN. If you had the bills, you obviously would have noted the bills as well as the contradictory testimony from both?

Ms. BLACK. Yes, sir.

The CHAIRMAN. OK. One more and then that's it.

Mr. GIUFFRA. Your report was issued on August 3, 1995; correct?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. We have heard testimony from Ms. Huber that she first found the billing records that have become so important here today, sometime in the first week or two of August 1995.

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Let's put up *The Washington Post* story of August 5, 1995. Your report was not made public; am I correct?

Ms. BLACK. We made a redacted version of the Executive Summary—which was the first of four or five books—public 2 days after our report was issued.

Mr. GIUFFRA. As far as you know, this article of August 5, 1995, would be the first public reporting of your report?

Ms. BLACK. I believe that is correct. It might have been late in the day on the 4th rather than the morning of the 5th that we released it. I think it was.

Mr. GIUFFRA. This news article states:

It was not previously known that the Little Rock firm in which the First Lady, Hillary Rodham Clinton, was then a partner worked on legal issues surrounding the 1,100 acre industrial and trailer park development.

If we could turn to the second page, the very conclusion of Ms. Schmidt's article, she says:

Hillary Clinton billed Madison \$4,172 for work on Castle Grande and the stock proposal according to documents released yesterday.

Do you see that?

Ms. BLACK. Yes.

Mr. GIUFFRA. That was based on a billing recap that was provided to you by the Rose Law Firm?

Ms. BLACK. I believe that is where she is drawing that material.

Mr. GIUFFRA. That recap did not set forth what particular services Mrs. Clinton had provided in connection with either the Castle Grande matter or the preferred stock issue?

Ms. BLACK. It in fact—in recapping, the matter number 1, which was a stock offering, and matter number 5 were combined.

Mr. GIUFFRA. You could not tell what Mrs. Clinton did on particular dates or the specific services that she rendered for Madison?

Ms. BLACK. No, sir.

Mr. GIUFFRA. Am I correct, if someone had the billing records which we now have, you would be able to ascertain what exactly Mrs. Clinton had done for the \$4,172 worth of work that she had billed for on Castle Grande in the stock proposal?

Ms. BLACK. You would be able to see with somewhat greater precision. In the billing entries, there are many things such as a conference with Seth Ward, which the subject of the conference is not identified. You could clarify substantially, but—

Mr. GIUFFRA. The billing records would allow you to clarify to some extent what she did to justify the money reflected on the billing recap?

Ms. BLACK. Yes, sir.

Senator SARBANES. There's a vote. We could vote and come back.

The CHAIRMAN. We will adjourn. I think we should be able to be back in—

Senator SARBANES. Maybe we can finish.

The CHAIRMAN. Let's see if we can.

Mr. BEN-VENISTE. I don't know the answer to this question, but I notice that there is a matter number 6.

Ms. BLACK. Yes, sir.

Mr. BEN-VENISTE. What is that matter number 6?

Ms. BLACK. That involves the Babcock loan, a workout of a delinquent loan that involved Madison.

Mr. BEN-VENISTE. Don Denton was an employee of Madison?

Ms. BLACK. Yes, sir. He was the loan officer, I believe, on the Babcock loan as well.

Mr. BEN-VENISTE. He was the loan officer on the Babcock loan, so that if you look at matter number 6, you find that Mrs. Clinton and others at the firm are dealing with Don Denton in connection with that matter; that would be logical?

Ms. BLACK. The first time in which I believe there is billing on the Babcock loan is April 9. The first time it is attributed to matter number 6.

Mr. BEN-VENISTE. The only conference that you related to us with Denton was what date that was billed to matter number 5?

Ms. BLACK. The conference billed to matter 5 was on April 7.

Mr. BEN-VENISTE. And that was 2 days before matter number 6 began?

Ms. BLACK. Yes, sir, as far as we know.

Mr. BEN-VENISTE. Do you think it might be possible that the conversation with Mr. Denton was really a matter number 6 matter that was put down as matter number 5? You can't tell, can you?

Ms. BLACK. Well, it was billed to matter number 5.

That's all I know.

Mr. BEN-VENISTE. Right. But in terms of matter number 6, the billing on matter number 6 starts just at about that time?

Ms. BLACK. It starts 2 days later.

Mr. BEN-VENISTE. Would you agree that there is the possibility that in connection with this conversation with Mr. Denton, that that possibly had to do with matter number 6?

Ms. BLACK. All I can tell you is that there was a conversation billed to matter number 5 between Mrs. Clinton and Mr. Denton. I do not know the substance of that conversation.

Senator SARBANES. Matter number 6, there were repeated billings for conversations or correspondence between Mrs. Clinton and Mr. Denton; is that not correct?

Ms. BLACK. I would have to look back at the memorandum, but I can recall two off the top of my head.

Senator SARBANES. Well, I think there are more than two.

Mr. BEN-VENISTE. Do you find that there were any other conversations between Mrs. Clinton and Mr. Denton that are attributed to matter number 5?

Ms. BLACK. I believe there was one.

Senator SARBANES. Actually, I have eight contacts, billings on matter number 6 involving Mrs. Clinton and Mr. Denton in a 2½ month period here.

Ms. BLACK. I haven't counted them up. That is probably correct.

The CHAIRMAN. We're going to adjourn, but let me just say that I have been advised that the Bill of Assurance is a legal covenant restricting the use of land, and so therefore that would fit in perfectly. He wanted to find out if there was, "he" being Jim McDougal, a covenant that would restrict the use of the property which would prohibit our planned use. That's what he said. So that's a Bill of Assurance, a legal covenant restricting—

Senator DODD. That would have to be filed on the land records I presume.

The CHAIRMAN. That's right.

Senator DODD. You check the land file, send an internist up to check that?

The CHAIRMAN. You would have your counsel do that, and obviously you call your lawyer and low man on the totem pole would go to check the records.

Senator DODD. That's what I used to do, Mr. Chairman.

Senator SARBANES. Mr. Chairman, could we include the full response of Mrs. Clinton to interrogatory number 64 about which Mr. Giuffra was asking?

The CHAIRMAN. Certainly.

Senator SARBANES. And I might note that in that response she did make reference to the tasting room for proposed brewery, the wet/dry township issue, provision of water and sewer service by a utility within the IDC property, and limited involvement with an option agreement between Mr. Ward and Madison Financial. So all of the subject matters touched upon were referenced in her response to the interrogatory, and I just wanted to put the entire answer in the record.

The CHAIRMAN. The interrogatory has already been in the record, but it will be placed in at the appropriate place. We'll ask them to put it in the record. I want to thank Ms. Black and Mr. Switzer for their testimony and for their candor, and I believe for being outstanding witnesses and letting us know what they knew and how they came to know it. You have gone to great lengths and we are deeply appreciative. We stand in recess until tomorrow at 10 a.m.

[Whereupon, at 4:25 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Wednesday, February 7, 1996.]

[Appendix supplied for the record follow:]

ROSE LAW FIRM

A PROFESSIONAL ASSOCIATION

ATTORNEYS

120 EAST FOURTH STREET

LITTLE ROCK, ARKANSAS 72201

TELEPHONE (501) 378-0431

TELECOPIER (501) 378-1280

U. S. DEPT.
OF JUSTICE

June 17, 1985

PHILIP CARROLL
W. GENE CLAY
C. GREGG GIBBS, JR.
GEORGE E. CAMPBELL
HERBERT C. DAVIS, III
STANLEY E. SMITH
H. RAYT SPERRY, III
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VINCENT FOSTER, JR.
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WILLIAM GEORGE CLINTON
C. BRANTLY BUCK
THE BIRD
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MICHAEL C. BIRD
GARY L. SPENCER
J. GUYTON WALKER
CHARLES D. BIRD
BY COUNSEL

Ms. Beverly Bassett
Ms. Nancy Jones
Mr. Charles Handley
Arkansas Securities Commission
#1 Capitol Mall - Rm. 4b-206
Little Rock, Arkansas 72201

RE: Application by Madison Guaranty Savings and Loan Association ("Madison") to engage in brokerage activities.

Greetings:

This letter is to respond to a memorandum dated May 22, 1985, from Mr. Charles Handley relating to the above-referenced application (the "Application"). Numerical references below relate to specifically numbered items in Mr. Handley's memorandum.

1. The Application has been amended for submission to the Arkansas Savings and Loan Supervisor, pursuant to Rule V(B) of the Rules and Regulations of the Arkansas Savings and Loan Association Board.
2. The name and address of the wholly-owned service corporation which owns all the stock of the broker-dealer is Madison Financial Corporation, 16th and Main Streets, Little Rock, Arkansas, 72206.
3. The broker-dealer is an existing entity corporation.
4. Attached as Exhibit "A" hereto are copies of charter documents, broker-dealer registration documents, and current financial statements of the broker-dealer.
5. Inapplicable.
6. Attached hereto as Exhibit "B" are copies of an unaudited balance sheet of Madison Financial Corporation, as of May 30, 1985. As is evident from this enclosure, the debt limitations on debt to unrelated parties, set forth in Rule V(B) (3) (ii), have not been exceeded.

RIC-039

0000084

5000149

7. Attached as Exhibit "C" are copies of Madison Guaranty financial statements as of March 31, 1985. As is evident from such enclosures, the total outstanding investment by Madison Guaranty in the capital stock, obligations or other securities of all service corporations, subsidiaries and joint ventures thereof does not exceed the limitation set forth in Rule V(C).

8. Attached as Exhibit "D" are copies of the Quarterly minimum net-worth calculation as of March 31, 1985. In order to meet the newly-imposed minimum net-worth requirements, Madison Guaranty proposes (i) to issue a new class of preferred stock (the issuance of which has been recently approved by the Arkansas Savings & Loan Supervisor), (ii) to engage in various property syndication projects to raise additional revenues, (iii) to continue its efforts to reduce operating expenses and to increase deposits, and (iv) to engage in other activities which management of Madison Guaranty Savings & Loan determine to be prudent in light of new net-worth requirements.

Please note that these enclosures indicate that deficiencies in Applicant's net-worth have gradually been reduced. The Applicant anticipates that no deficiency will exist in the near future.

9. An executed consent to examine agreement on behalf of Madison Financial Corporation has previously been filed with the Arkansas Securities Commission..

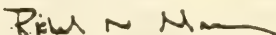
10. The actual name of the broker-dealer shall be Madison Investment Corporation.

11. The address of Madison is P.O. Box 537, Augusta, Arkansas, 72006.

With this response, Madison hereby amends the Application. Such Amended Application is attached immediately hereto. Given the immediacy of the need to implement steps to infuse capital into the Association, your prompt consideration of this Application will be appreciated. Should you have questions or additional comments, please advise me.

Very truly yours,

RIC-039286



Richard N. Massey

HILLARY CLINTON'S IDC BILLINGS

DATE	TIME BILLED	AMOUNT	ACCOUNT BILLED
11/14/85	.5 hours	\$ 62.50	GENERAL
11/20/85	1.0 hours	\$ 125.00	GENERAL
11/26/85	1.0 hours	\$ 125.00	STOCK OFFERING
12/4/85	.5 hours	\$ 62.50	IDC
12/6/85	.3 hours	\$ 37.50	IDC
12/10/85	.5 hours	\$ 62.50	IDC
12/11/85	.5 hours	\$ 62.50	IDC
12/19/85	.5 hours	\$ 62.50	IDC
12/20/85	1.0 hours	\$ 125.00	IDC
12/23/85	1.0 hours	\$ 125.00	IDC
12/24/85	1.0 hours	\$ 125.00	IDC
12/26/85	.5 hours	\$ 62.50	LTD PARTNERSHIP
1/7/86	1.0 hours	\$ 125.00	IDC
1/14/86	1.0 hours	\$ 125.00	IDC
2/17/86	.5 hours	\$ 62.50	IDC
2/28/85	.8 hours	\$ 100.00	IDC
3/3/86	.5 hours	\$ 62.50	IDC
3/10/86	.3 hours	\$ 37.50	IDC
4/7/86	.2 hours	\$ 70.00	IDC
5/1/86	2.0 hours	\$ 280.00	GENERAL
6/10/86	.4 hours	\$ 56.00	GENERAL
SUBTOTAL	15.0 HOURS	\$ 1,956.00	
UNKNOWN	14.5 HOURS	\$ 1,818.75	Reflected in 1/86 Billing
TOTAL	29.5 HOURS	\$ 3,774.75	

DRAFT PRODUCT

ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL

DRAFT PRODUCT

Increase or Decrease
Between Billing Memo
and Actual Invoice

Increase or Decrease
Between Billing & Payment
History and Actual Invoice

Increase or Decrease
Between Billing Memo and
Billing & Payment History

Increase or Decrease
Between Billing Memo and
Billing & Payment History

Increase or Decrease
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Billing & Payment History

Increase or Decrease
Between Billing Memo and
Billing & Payment History

MATTER NUMBER	INVOICE DATE	INVOICE NUMBER	COLUMN #1		COLUMN #2		COLUMN #3		COLUMN #4		COLUMN #5		COLUMN #6	
			BILLING MEMO	Total	BILLING HISTORY	Total	ACTUAL INVOICE	Total	History and Actual Invoice	Total	History and Actual Invoice	Total	History and Actual Invoice	Total
1 & 2	05/08/85	4974	\$2,018.00		\$2,018.00	\$0.00	\$2,018.00	\$0.00		\$2,018.00	\$0.00		\$2,018.00	\$0.00
1	06/10/85	5462	\$82.20		\$190.20	\$108.00	\$190.20	\$108.00		\$190.20	\$108.00		\$190.20	\$108.00
1 & 2	07/15/85	6098	\$2,041.50		\$1,944.00	(\$97.50)	\$1,944.00	(\$97.50)		\$1,944.00	(\$97.50)		\$1,944.00	(\$97.50)
1 & 2	08/08/85	6655	\$880.35		\$880.35	\$0.00	\$880.35	\$0.00		\$880.35	\$0.00		\$880.35	\$0.00
1	09/12/85	7000	n/a		\$90.00	n/a	\$90.00	\$0.00		\$90.00	\$0.00		\$90.00	\$0.00
1	12/05/85	8037	n/a		\$655.00	n/a	\$655.00	\$0.00		\$655.00	\$0.00		\$655.00	\$0.00
1	01/30/86	9386	\$1,046.00		\$1,773.50	\$727.50	\$2,518.50	\$727.50		\$2,518.50	\$727.50		\$2,518.50	\$727.50
1	07/28/86	11941	n/a		\$5.59	n/a	\$5.59	\$5.59		\$5.59	\$5.59		\$5.59	\$5.59
1	01/15/87	15422	n/a		\$6.30	n/a	\$6.30	\$6.30		\$6.30	\$6.30		\$6.30	\$6.30
2	06/10/85	5463	\$889.00		\$889.00	\$0.00	\$889.00	\$0.00		\$889.00	\$0.00		\$889.00	\$0.00
2	09/12/85	7001	\$30.10		\$30.10	\$0.00	\$30.10	\$0.00		\$30.10	\$0.00		\$30.10	\$0.00
2	12/05/85	8036	\$724.90		\$724.90	\$0.00	\$724.90	\$0.00		\$724.90	\$0.00		\$724.90	\$0.00
2	01/30/86	9387	\$227.50		\$227.50	\$0.00	\$227.50	\$0.00		\$227.50	\$0.00		\$227.50	\$0.00
3	12/05/85	8995	n/a		\$89.51	n/a	\$89.51	\$0.00		\$89.51	\$0.00		\$89.51	\$0.00
4	09/12/85	5996	\$234.00		\$734.00	\$0.00	\$734.00	\$0.00		\$734.00	\$0.00		\$734.00	\$0.00
4	12/05/85	8035	\$212.50		\$232.50	\$20.00	\$232.50	\$20.00		\$232.50	\$20.00		\$232.50	\$20.00
4	01/30/86	9388	\$381.25		\$68.75	(\$312.50)	\$353.50	\$353.50		\$353.50	\$353.50		\$353.50	\$353.50
4	04/07/86	10149	\$12.55		\$12.55	\$0.00	\$12.55	\$0.00		\$12.55	\$0.00		\$12.55	\$0.00
4	05/22/86	10918	\$392.50		\$392.50	\$0.00	\$392.50	\$0.00		\$392.50	\$0.00		\$392.50	\$0.00
4	06/27/86	11470	\$56.00		\$56.00	\$0.00	\$56.00	\$0.00		\$56.00	\$0.00		\$56.00	\$0.00
4	09/30/86	16446	\$500.60		\$500.60	\$0.00	\$500.60	\$0.00		\$500.60	\$0.00		\$500.60	\$0.00
5	09/30/86	7090	n/a		\$654.30	n/a	\$654.30	\$0.00		\$654.30	\$0.00		\$654.30	\$0.00
5	10/29/86	7566	n/a		\$550.00	n/a	\$550.00	\$0.00		\$550.00	\$0.00		\$550.00	\$0.00
5	01/30/86	9389	\$1,547.30		\$2,466.25	\$1,818.95	\$4,670.35	\$1,818.95		\$4,670.35	\$1,818.95		\$4,670.35	\$1,818.95
5	03/05/86	9694	n/a		\$993.25	n/a	\$993.25	\$0.00		\$993.25	\$0.00		\$993.25	\$0.00
5	04/07/86	10150	\$895.12		\$895.12	\$0.00	\$895.12	\$0.00		\$895.12	\$0.00		\$895.12	\$0.00
5	05/22/86	10919	\$31.00		\$121.00	\$90.00	\$121.00	\$90.00		\$121.00	\$90.00		\$121.00	\$90.00
5	05/27/86	10977	\$918.45		\$1,128.45	\$210.00	\$1,128.45	\$210.00		\$1,128.45	\$210.00		\$1,128.45	\$210.00
5	06/27/86	11471	\$2,104.55		\$2,104.55	\$0.00	\$2,104.55	\$0.00		\$2,104.55	\$0.00		\$2,104.55	\$0.00
5	09/06/86	12686	\$364.00		\$364.00	\$0.00	\$364.00	\$0.00		\$364.00	\$0.00		\$364.00	\$0.00
5	12/12/86	14438	n/a		\$112.30	n/a	\$112.30	\$0.00		\$112.30	\$0.00		\$112.30	\$0.00
TOTALS			SEE NOTE 1		\$21,401.87	\$2,564.25	\$24,572.67	\$24,572.67		\$24,572.67	\$24,572.67		\$24,572.67	\$24,572.67

n/a = document not available for review
NOTE 1 Billing memoranda for several of the invoices were not provided for our review. Accordingly, no total has been shown in this column

Switzer
E + 3

DATE	ROSE LAW FIRM - ATTORNEY CONFERENCE BILLINGS	HOURS BILLED
Stock Offering		
4/23/85	H. CLINTON - Conference W. Gregory; Conference R. Massey; Conference J. McDougal; Conference J. Latham W. GREGORY - NO Conference w/ H. Clinton	HRC: 2.0
4/24/85	H. CLINTON - Conferences R. Massey; Conference J. Latham; Conference D. Fitzhugh; Review drafts R. MASSEY - NO Conference w/ H. Clinton	HRC: 1.5
4/26/85	H. CLINTON - Conference R. Massey; Conference Davis Fitzhugh; Conference J. Latham R. MASSEY - NO Conference w/ H. Clinton	HRC: 2.00
4/29/85	H. CLINTON - Conference R. Massey; Conference B. Bassett R. MASSEY - NO Conference w/ H. Clinton	HRC: 1.00
6/4/85	H. CLINTON - Conference R. Massey R. MASSEY - NO Conference w/ H. Clinton	HRC: .20
6/5/85	H. CLINTON - Conference C. Giroir & J. McDougal C. GIROIR - NO Conference w/ H. Clinton	HRC: .20
6/7/85	H. CLINTON - T/Conference R. Massey R. MASSEY - NO T/Conference w/ H. Clinton	HRC: .50
11/26/85	H. CLINTON - Conference W. Hubbell W. HUBBELL - NO Conference w/ H. Clinton	HRC: 1.0
Limited Partnership		
5/08/85	H. CLINTON - T/Conference R. Massey R. MASSEY - NO T/Conf w/ H. Clinton	HRC: .50

DATE	ROSE LAW FIRM - ATTORNEY CONFERENCE BILLINGS	HOURS BILLED
7/18/85	H. CLINTON - 2 Conferences R. Massey; 2 Conferences S. McDougal; Review memo R. MASSEY - NO Conferences w/ H. Clinton	HRC: 1.00
7/25/85	H. CLINTON - Conference R. Massey R. MASSEY - NO Conferences w/ H. Clinton	HRC: .50
General Madison		
9/5/85	H. CLINTON - Conference R. Massey R. MASSEY - NO Conference w/ H. Clinton	HRC: .30
9/20/85	H. CLINTON - Conference R. Massey & J. Latham; Conference R. Massey and D. Knight R. MASSEY - NO Conferences w/ H. Clinton	HRC: 1.00
11/20/85	H. CLINTON - Conference W. Hubbell; Conference S. Ward W. HUBBELL - NO Conferences w/ H. Clinton	HRC: 1.00
12/20/85	H. CLINTON - Conference R. Massey R. MASSEY - NO Conference w/ H. Clinton	HRC: 1.00
6/10/86	H. CLINTON - T/Conference R. Massey; Conference S. Ward R. MASSEY - NO Conference w/ H. Clinton	HRC: .40
5 I.D.C.		
12/4/85	H. CLINTON - Conference R. Massey R. MASSEY - NO Conference w/ H. Clinton	HRC: .50
1/7/86	H. CLINTON - Conference K. Shemin; Conference S. Ward K. SHEMIN - NO Conference w/ H. Clinton	HRC: 1.00

DATE	ROSE LAW FIRM - ATTORNEY CONFERENCE BILLINGS	HOURS BILLED
1/14/86	H. CLINTON - Conference J. Birch; Conference K. Shemin; Conference R. Donovan J. BIRCH - NO Conference w/ H. Clinton K. SHEMIN - NO Conference w/ H. Clinton	HRC: 1.00
Babcock		
5/1/86	H. CLINTON - Conference H. Rule; Conference R. Cobb; T/Conferences D. Denton H. RULE - NO Conferences w/ H. Clinton	HRC: 1.00
5/2/86	H. CLINTON - Conferences K. Burns; T/Conference H. Rule; T/Conference B. Daugherty K. BURNS - NO Conference w/ H. Clinton H. RULE - NO Conference w/ H. Clinton	HRC: 1.00
5/13/86	H. CLINTON - T/Conferences H. Rule H. RULE - NO T/Conferences w/ H. Clinton	HRC: .50



RESOLUTION TRUST CORPORATION
Resolving The Crisis
Restoring The Confidence

VIA AIRBORNE EXPRESS

December 29, 1995

James A. Neal
Executive Director
Arkansas Supreme Court Committee on
Professional Conduct
625 Marshall Street
Justice Building - Room 205
Little Rock, AR 72201

Re: Conflicts of interest by the Rose Law Firm in connection with RTC
representation

Dear Mr. Neal:

I am writing to refer to the Committee on Professional Conduct certain allegations contained in the enclosed Report of Investigation ("Report") prepared by the RTC Office of Inspector General ("OIG") regarding alleged conflicts of interest by the Rose Law Firm in its representation of the RTC as outside legal counsel.

The Report was prepared pursuant to a request on March 2, 1994, from the Deputy and Acting Chief Executive Officer, John E. Ryan, after a report was issued on February 8, 1994 by the RTC Office of Contractor Oversight and Surveillance (OCOS). OCOS addressed certain conflict of interest allegations reported in the press surrounding the Rose Law Firm's representation of the FDIC and the RTC in a lawsuit against the former independent accountants for Madison Guaranty Savings and Loan Association. Mr. Ryan's request fulfilled a commitment by then RTC Interim Chief Executive Officers Roger C. Altman at a February 24, 1994, hearing of the Senate Committee on Banking, Housing and Urban Affairs to ask the OIG to review the OCOS report.

We believe that the Report provides a sufficient indication of the existence of possible undisclosed conflicts of interest by the Rose Law Firm such that it raises concerns about the Rose Law Firm's compliance with the Arkansas Rules of Professional Conduct. We therefore are referring this matter to your Committee for your further consideration and any action you deem appropriate. Accompanying this letter are the following documents: (i) the Report consisting of 35 volumes (together with all exhibits thereto), (ii) the Rose Law Firm Response to the Report, (iii) the OIG Rebuttal to the Rose Law Firm Response, and (iv) the Joint FDIC/RTC Outside Counsel Conflicts

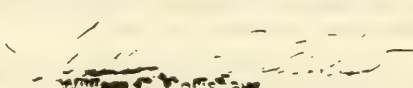
801 17th Street, N.W. Washington, D.C. 20424

James A. Neal
Arkansas Supreme Court Committee on
Professional Conduct
December 29, 1995
Page 2

Committee decision memorandum relating to the Report. We are also enclosing a copy of the Report on the Rose Law Firm's Conduct of the Accounting Malpractice Litigation Pertaining to Madison Guaranty Savings & Loan dated December 28, 1995 prepared for the RTC by outside counsel Pillsbury Madison & Sutro L.L.P.

Given the confidential nature of the information contained in the Report and related documents, these documents should not be released publicly or to other agencies, without the permission of the RTC or its successor agency, the FDIC. I ask that you take appropriate steps to protect the confidentiality of the Report and related documents and that you contact me if you receive any requests from sources outside your Committee for any information contained in the Report.

Sincerely,


William C. Corns
General Counsel

Enclosure

cc: John J. Adair, RTC Inspector General
Aidon Atkias, Esq. (w/o enclosure)
Vinson & Elkins

M E M O R A N D U M

TO: The First Lady C O N F I D E N T I A L
FROM: Harold Ickes
DATE: 1 March 1994
RE: Resolution Trust Corporation

Attached is a copy of W. Neil Eggleston's 28 February 1994 memorandum to me regarding certain issues involving the RTC and the Rose Law Firm ("Rose"). Attached to that memo are copies of the FDIC report, dated 17 February 1994, concerning possible conflicts of interest regarding Rose's representation of the FDIC against Madison Guaranty, and the RTC's 8 February 1994 report concerning the same subject.

It is my understanding that shortly after Roger Altman met with Bernie Nussbaum, me and others concerning the RTC statute of limitations, he received an opinion from an ethics officer of the Treasury Department that he, as the acting head of RTC, did not have to recuse himself from matters involving Rose/Madison Guaranty. I will confirm this situation.

Please let me know if you want to discuss the attached.

THE WHITE HOUSE
WASHINGTON

(revised)

February 28, 1994

MEMORANDUM FOR HAROLD ICKES
DEPUTY CHIEF OF STAFFFROM: W. NEIL EGGLESTON
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: WHITEWATER--FDIC AND RTC ROSE LAW FIRM ISSUES

The recent release of the FDIC and RTC reports addressing the possible conflict of interest of the Rose law firm in its representation of Madison Guaranty raises a number of issues.

What did the FDIC and RTC conclude, and why does it seem that their conclusions are inconsistent?

1. The FDIC Report.

The FDIC report was released on or about February 17, 1994. It was drafted by the Legal Division of the FDIC, and presented to FDIC Acting Chairman Hove, a Republican.

Frost & Co. was Madison Guaranty's accounting firm in 1984 and 1985. In that capacity, it prepared certain audited financial reports for Madison. The Rose firm used the 1985 audited financial statement in connection with its representation of Madison Guaranty before the Arkansas Securities Commission.

Madison Guaranty sued Frost & Co. in 1988 for the negligent preparation of financial statements. At the time, Madison was represented by the Gerrish firm. McDougal had been forced out of the management of Madison in the summer of 1986. When the FDIC took over Madison Guaranty in February 1989, it determined that the Gerrish firm had a conflict. In March 1989, the FDIC therefore replaced the Gerrish firm with the Rose law firm.

The FDIC report reviewed the time period in which the FDIC was responsible for the conservatorship of Madison Guaranty, from February 28, 1989 to August 9, 1989 (when the RTC was created and took over the conservatorship of failed savings and loans). The FDIC was thus the entity that retained the Rose law

firm to pursue the Frost & Co. litigation. The FDIC report reviewed relevant FDIC and RTC documents and interviewed participants, including FDIC and RTC employees and Rose law firm lawyers.

On the factual issue of whether the Rose law firm had disclosed to the FDIC its prior representation of Madison Guaranty, the FDIC concluded that the record was unclear. The report nevertheless concluded that no conflict existed between the Rose law firm's prior representation of Madison Guaranty and its representation of the FDIC in the Frost & Co. litigation. The report concluded that the firm's representation in 1985 was not "directly adverse" to the representation in 1989.

The FDIC based its conclusion on two grounds. First, it stated that there was no evidence that the firm had any involvement in the creation of the Frost & Co. audit report that became the subject of the 1989 litigation. Second, it stated "we have found no evidence that the Firm had a close relationship with the S&L which might call into question its independence." This was one of the sentences that Senator D'Amato attacked so bitterly at the Senate Banking Committee hearing.

On the issue of whether Mr. Hubbell had disclosed his relationship with his father-in-law, Seth Ward, who was then in litigation with Madison Guaranty, the FDIC stated that it was uncertain whether Mr. Hubbell had disclosed the relationship before the FDIC retained the Rose law firm. Nevertheless, the relationship was plainly known to the FDIC within three months of retention. Mr. Hubbell agreed to the creation of an internal firm "firewall" to guard against him receiving information that might be of use to his father-in-law. At the hearing, Senator Furoloth ridiculed what he called a "business firewall" through which he claimed light and heat could easily penetrate.

At the hearing, Chairman Hove testified that in 1989, FDIC standards required an actual conflict before the agency would bar a retention. Today, the FDIC's standards are much tougher and would bar a retention on the showing of an "appearance of a conflict of interest." Chairman Hove testified that under today's standards, the Rose law firm facts would present an appearance of a conflict.

Chairman Hove agreed to have the FDIC Inspector General ("IG") look into the conflict issue. It was somewhat unclear at the hearing whether the IG would look only at the process by which the FDIC arrived at its decision or would review the substantive issue. It was also unclear whether the IG would apply the actual conflict standard or the appearance of a conflict standard in its review. We should assume, however, that

the IG will adopt the broadest possible interpretation of its mandate.

2. The RTC Report.

The RTC report was released on February 25, 1994 by Senator D'Amato.

The RTC report differs in two major respects from the FDIC report. First, the RTC did not interview any Rose law firm attorneys. The RTC reviewed RTC records and interviewed RTC employees only. Second, the report is factual only. The report reached no conclusion on whether the Rose law firm had a conflict. As the report describes its scope, "This investigation focused only on whether or not Rose disclosed its previous representation of Madison to the FDIC and RTC."

The RTC concluded that Rose did not disclose either its prior representation of Madison Guaranty or Mr. Hubbell's relationship with Mr. Ward.¹ The report acknowledges, however, that within a few months of the retention, the supervisory FDIC attorney, Ms. Breslaw, was made aware of Mr. Hubbell's relationship with Mr. Ward. Ms. Breslaw determined that no conflict existed.

The RTC did not hire the Rose law firm; rather, the retention by the FDIC took place before the RTC was even in existence. Further, the RTC acknowledges in its report that it had no outside conflicts committee, nor regulations, guidance or policy on conflicts until after 1989.

The conclusion of the RTC report is that the matter was referred to the Office of the General Counsel (Ellen Kulka) for review. "It is deemed appropriate."²

¹ An ultimate finding that Rose had not disclosed either the prior representation of Madison Guaranty or the Ward relationship would be a finding that Mr. Hubbell was not truthful in his recollection. Mr. Hubbell told the FDIC when it was preparing its report that he advised FDIC attorneys about the prior Rose representation of Madison Guaranty and believes that he also advised the government attorneys about his relationship with Mr. Ward. Mr. Hubbell was not interviewed by the RTC attorneys during the preparation of their report.

² As noted above, the RTC report only addressed the factual issues of representation and disclosure. The report did not attempt to apply the facts to any applicable conflicts rules or regulations. It is not clear what the RTC General Counsel, Ms. Kulka, will do with the report. The RTC has an Outside Counsels' (continued...)

At the hearing, Mr. Altman agreed to refer the RTC report to the RTC IG for review.

What sanction could be imposed if the FDIC/RTC finds that the Rose law firm had a conflict of interest or an appearance of a conflict in handling the Frost & Co. litigation in 1989 and failed to disclose that conflict?

As noted above, it is not clear whether the FDIC or the RTC will review this matter under an actual conflict standard or an appearance of a conflict standard. It would seem that to impose any sanction, the IG would have to decide that the Rose firm violated a duty that was in existence at the time, not a duty that later became more strict.

The most severe sanction that would likely flow from a finding that the Rose law firm had a duty to disclose its prior representation of Madison Guaranty and its relationship with Mr. Ward and that it breached that duty would be that the Rose law firm would be permanently barred from any further work for the RTC or the FDIC (and possibly other banking regulators). Lesser sanctions imposed by the regulatory agencies might also be possible, such as a temporary bar.

Under the facts as we now understand them, it would seem quite unlikely that the RTC could bring a civil action against the Rose firm or any of its attorneys for failure to disclose the conflict. To prevail, the RTC would have to show fraud or intentional misconduct that caused substantial loss to the institution or unjust enrichment to the Rose firm. The RTC could only really show fraud or intentional misconduct if it could demonstrate that the Rose law firm "threw" the Frost & Co. litigation because of its prior representation of Madison Guaranty.

Criminal liability for the Rose firm would seem even more remote. To prevail, the Special Counsel would have to show that Rose acted with intent to defraud the savings and loan or wilfully made false statements to the FDIC/RTC through its failure to disclose the conflict.

What civil matters is the RTC investigating, who can it sue, and why didn't we hear anything about a civil investigation until late 1993?

²(...continued)

Conflicts Committee to which she could refer the report. She could presumably also refer the report with a recommendation to the RTC Acting CEO Jack Ryan for action.

The RTC is investigating whether it has a civil tort action against anyone who caused a loss to Madison Guaranty. This would include insiders such as James and Susan McDougal and members of the Board of Madison. It also includes professionals who provided service to Madison Guaranty, such as the Rose law firm, other law firms, and accounting firms. The Frost & Co. suit is an example of a suit against a professional service provider that caused loss to Madison Guaranty through a negligent audit. The RTC could also sue outsiders, including the President and Mrs. Clinton, if the RTC found that the outsiders worked with insiders illegally to divert assets of the savings and loan. For example, if the RTC believed that the Clinton campaign knowingly received diverted Madison assets at the April 1985 fundraiser or that the Clintons knowingly received other diverted Madison Guaranty assets through Whitewater, it could bring suit. The RTC commonly sues the recipient of a loan where it has information that the borrower knew that the loan was improper.

Under the legislation creating the RTC in 1989, the RTC as conservator of a failed savings and loan had to bring a tort claim within three years of the time the RTC (or FDIC as predecessor) took over the institution. The FDIC took over Madison Guaranty on February 28, 1989. Thus, all torts had to be brought by February 28, 1992. That day passed during the campaign.

The Resolution Trust Corporation Completion Act, signed by the President on December 17, 1993, revived the possibility of a civil action. Under that legislation, a narrow class of torts--~~those involving intentional misconduct~~ and that either caused substantial loss to the institution or unjust enrichment to the defendant--were revived. The statute extended the limitations period such that this category of tort could be brought within five years of the time the RTC took over the institution.⁴ Moreover, the statute specifically provided that the five year period would apply even if the three year limitations period had already run.⁵

³ I am unaware of any civil suits brought by the RTC prior to February 28, 1992, but I would not be surprised if it had sued McDougal and other insiders. McDougal was indicted in 1989 for bank fraud involving Madison Guaranty, and was acquitted in 1990. It would be fairly common for the RTC to pursue a civil action even after an acquittal.

⁴ Torts based on negligence are still covered by the three year statute of limitations.

⁵ The statute of limitations for crimes involving financial institutions is 10 years from the date the illegal conduct occurred, regardless of when the RTC took over the institution.

As a result, the RTC would not have been looking into a possible civil suit involving Madison Guaranty after February 1992 and before the passage of the statute last fall. In late 1993 and early 1994, Senator D'Amato and Rep. Leach recognized that the legislation had revived the possibility of an RTC lawsuit in the Madison matter. Both took to the floor of their respective chambers, aggressively urging the RTC to commence an action before the statute expired. In early 1994, the RTC--then faced with a statute of limitations that would run by the end of February--hired the San Francisco-based law firm of Pillsbury, Madison and Sutro to assist it in determining whether to bring any civil actions arising out of Madison.*

In February 1994, the statute of limitations was extended once again, through the life of the RTC, which is expected to expire on December 31, 1995.

Now that Mr. Altman as Acting CEO of the RTC has recused himself from further involvement in Madison Guaranty matters, who at the RTC will be the decision-maker on whether to bring a civil action arising out of the failure of Madison Guaranty?

Following his testimony before the Senate Banking Committee on Thursday, Mr. Altman recused himself as Acting CEO of the RTC from any further involvement in Madison Guaranty/Whitewater matters.

* The partner at Pillsbury assigned to this matter is Jay Stephens, a Republican who was a member of the Reagan and Bush administrations. From 1981 to April 1986, Mr. Stephens was a political appointee at the Justice Department. By 1986, he had become Associate Deputy Attorney General. From April 1986 through March 1988, he was Deputy Counsel to the President. In that capacity, he had a role in the Iran/Contra Affair. After published reports that Oliver North had shredded documents, Mr. Stephens called Pawn Hall. When she denied (falsely) that any improper shredding had taken place, Mr. Stephens accepted her denial, and the White House issued a statement denying the shredding.

In March 1988, President Reagan appointed Mr. Stephens to be U.S. Attorney for the District of Columbia. When President Clinton sought the removal of all U.S. Attorneys in April 1993, Mr. Stephens called a press conference at which he suggested that the President was acting to frustrate the investigation of Rep. Rostenkowski. At the time, Senator Dole called for hearings into what he termed the "March massacre." Until January 1994, Mr. Stephens had been considering running for the Senate.

The top official at the RTC who will be making these decisions on Madison Guaranty is Jack Ryan. Mr. Ryan was formerly with the Office of Thrift Supervision. He is a career official. His principal advisor will be Ellen Kulka, now General Counsel of the RTC, who also came from OTS. Ms. Kulka is also a career official.

We intend to nominate a person for the position of CEO of the RTC within the next few weeks. We can anticipate that any person the President nominates will be pressured to recuse from any Madison-related matters. If the person refuses to recuse and is confirmed, then that person will become the decision maker. If that person is forced to recuse to achieve confirmation, then Jack Ryan would remain the decision-maker on Madison matters at the RTC.

W.N.E.

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8/20/85 MF corp res for Ward to act in purchase of IDC

9/3/85 McD/Ward agrmt: Ward pur N of 145th for \$1.15; M 270 day optn for \$1.187

9/13/85 IDC-MFC Purchase Agrmt. MFC Assignment to Ward

9/24/85 Ward/MF Agrmt.: W pur non-recourse all N of 145, water & sewer; 270 day option for amt of note + int; 10/4% commission

* Backdated Agrmt excepts 22.5 acre Holman acres; \$35K optn. payment

10/4/85 IDC closes.

2/25/86 W \$70K unsecured note to MG, ammt left on IDC

2/28/86 Castle Water & Sewer closes: all IDC gone except Holman acres; \$1.15 W note paid

3/31/86 MG gives W \$400K: secured by Holman acres; personal recourse

4/7/86 MF note to Ward, \$300K

5/1/86 90 day Option Ward to MFC; \$400K price; \$1K paymt

6/6/86 Ward released from per lia on \$400 and \$70K notes

12/12/86 Wards quitclaim Holman acres to Madison

9/2/87 Ward v. Madison compl. filed

8/30/88 2 day trial begins, judgement of ~\$350K in favor of Ward

9/30/93 Ward/RTC settle: Ward pays \$325K and gets full release

Pat Black
(2/5/96)
Exhibit 3

BILLING MEMORANDUM - 60444 05/13/86 PAGE 1 HILLARY-CLINTON

08242-MADISON-GUARANTY-SAVINGS/LOAN
 141M AND 141M
 141M AND 141M
 LITTLE ROCK-AR 23301

4. GENERAL

DATE	TIME	PATTER VALUE	DESCRIPTION OF SERVICES RENDERED	8280
04/16/86	1-50	112.50	CONFERENCE WITH P. HERITAGE; LOCATE AND REVIEW MONTVILLE FILES	8280
05/01/86	2-00	280.00	CONFERENCE WITH SEYM WARD; TELEPHONE CONFERENCE WITH SEYM WARD REGARDING OPTION; TELEPHONE CONFERENCE WITH MIKE SCHAUSSLEIN; BRESNA-ORION.	134
FEES TOTAL	3-50	392.50		

ATTY DATE CHECK DISB AMT QUAN DESCRIPTION OF DISBURSEMENT

TIME SUMMARY BY ATTORNEY

ATTORNEY	TIME	STANDARD VALUE	HATTER VALUE	AMOUNT TO BILL	5/82	LAST	DISB
11 MM RICHARD MASSET	1-50	112.50	112.50	112.50	75.00	04/16/86	
43-MRC HILLARY-CLINTON	2-00	280.00	280.00	280.00	160.00	05/01/86	
9999 FIRM FIRM ATTORNEY	-00						
TOTAL FEES	3-50	392.50	392.50	392.50	235.00		

AGED TIME AND DISB 05/13/86 0- 30 31- 60 61- 90 91- 120 121- 150 151- 180 181- 210 211- 240 241- 270 271- 300 301- 330 331- 360 361- 390 391- 420 421- 450 451- 480 481- 510 511- 540 541- 570 571- 600 601- 630 631- 660 661- 690 691- 720 721- 750 751- 780 781- 810 811- 840 841- 870 871- 900 901- 930 931- 960 961- 990 991- 1020 1021- 1050 1051- 1080 1081- 1110 1111- 1140 1141- 1170 1171- 1200 1201- 1230 1231- 1260 1261- 1290 1291- 1320 1321- 1350 1351- 1380 1381- 1410 1411- 1440 1441- 1470 1471- 1500 1501- 1530 1531- 1560 1561- 1590 1591- 1620 1621- 1650 1651- 1680 1681- 1710 1711- 1740 1741- 1770 1771- 1800 1801- 1830 1831- 1860 1861- 1890 1891- 1920 1921- 1950 1951- 1980 1981- 2010 2011- 2040 2041- 2070 2071- 2100 2101- 2130 2131- 2160 2161- 2190 2191- 2220 2221- 2250 2251- 2280 2281- 2310 2311- 2340 2341- 2370 2371- 2400 2401- 2430 2431- 2460 2461- 2490 2491- 2520 2521- 2550 2551- 2580 2581- 2610 2611- 2640 2641- 2670 2671- 2700 2701- 2730 2731- 2760 2761- 2790 2791- 2820 2821- 2850 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5581- 5610 5611- 5640 5641- 5670 5671- 5700 5701- 5730 5731- 5760 5761- 5790 5791- 5820 5821- 5850 5851- 5880 5881- 5910 5911- 5940 5941- 5970 5971- 6000 6001- 6030 6031- 6060 6061- 6090 6091- 6120 6121- 6150 6151- 6180 6181- 6210 6211- 6240 6241- 6270 6271- 6300 6301- 6330 6331- 6360 6361- 6390 6391- 6420 6421- 6450 6451- 6480 6481- 6510 6511- 6540 6541- 6570 6571- 6600 6601- 6630 6631- 6660 6661- 6690 6691- 6720 6721- 6750 6751- 6780 6781- 6810 6811- 6840 6841- 6870 6871- 6900 6901- 6930 6931- 6960 6961- 6990 6991- 7020 7021- 7050 7051- 7080 7081- 7110 7111- 7140 7141- 7170 7171- 7200 7201- 7230 7231- 7260 7261- 7290 7291- 7320 7321- 7350 7351- 7380 7381- 7410 7411- 7440 7441- 7470 7471- 7500 7501- 7530 7531- 7560 7561- 7590 7591- 7620 7621- 7650 7651- 7680 7681- 7710 7711- 7740 7741- 7770 7771- 7800 7801- 7830 7831- 7860 7861- 7890 7891- 7920 7921- 7950 7951- 7980 7981- 8010 8011- 8040 8041- 8070 8071- 8100 8101- 8130 8131- 8160 8161- 8190 8191- 8220 8221- 8250 8251- 8280 8281- 8310 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13200 13201- 13230 13231- 13260 13261- 13290 13291- 13320 13321- 13350 13351- 13380 13381- 13410 13411- 13440 13441- 13470 13471- 13500 13501- 13530 13531- 13560 13561- 13590 13591- 13620 13621- 13650 13651- 13680 13681- 13710 13711- 13740 13741- 13770 13771- 13800 13801- 13830 13831- 13860 13861- 13890 13891- 13920 13921- 13950 13951- 13980 13981- 14010 14011- 14040 14041- 14070 14071- 14100 14101- 14130 14131- 14160 14161- 14190 14191- 14220 14221- 14250 14251- 14280 14281- 14310 14311- 14340 14341- 14370 14371- 14400 14401- 14430 14431- 14460 14461- 14490 14491- 14520 14521- 14550 14551- 14580 14581- 14610 14611- 14640 14641- 14670 14671- 14700 14701- 14730 14731- 14760 14761- 14790 14791- 14820 14821- 14850 14851- 14880 14881- 14910 14911- 14940 14941- 14970 14971- 15000 15001- 15030 15031- 15060 15061- 15090 15091- 15120 15121- 15150 15151- 15180 15181- 15210 15211- 15240 15241- 15270 15271- 15300 15301- 15330 15331- 15360 15361- 15390 15391- 15420 15421- 15450 15451- 15480 15481- 15510 15511- 15540 15541- 15570 15571- 15600 15601- 15630 15631- 15660 15661- 15690 15691- 15720 15721- 15750 15751- 15780 15781- 15810 15811- 15840 15841- 15870 15871- 15900 15901- 15930 15931- 15960 15961- 15990 15991- 16020 16021- 16050 16051- 16080 16081- 16110 16111- 16140 16141- 16170 16171- 16200 16201- 16230 16231- 16260 16261- 16290 16291- 16320 16321- 16350 16351- 16380 16381- 16410 16411- 16440 16441- 16470 16471- 16500 16501- 16530 16531- 16560 16561- 16590 16591- 16620 16621- 16650 16651- 16680 16681- 16710 16711- 16740 16741- 16770 16771- 16800 16801- 16830 16831- 16860 16861- 16890 16891- 16920 16921- 16950 16951- 16980 16981- 17010 17011- 17040 17041- 17070 17071- 17100 17101- 17130 17131- 17160 17161- 17190 17191- 17220 17221- 17250 17251- 17280 17281- 17310 17311- 17340 17341- 17370 17371- 17400 17401- 17430 17431- 17460 17461- 17490 17491- 17520 17521- 17550 17551- 17580 17581- 17610 17611- 17640 17641- 17670 17671- 17700 17701- 17730 17731- 17760 17761- 17790 17791- 17820 17821- 17850 17851- 17880 17881- 17910 17911- 17940 17941- 17970 17971- 18000 18001- 18030 18031- 18060 18061- 18090 18091- 18120 18121- 18150 18151- 18180 18181- 18210 18211- 18240 18241- 18270 18271- 18300 18301- 18330 18331- 18360 18361- 18390 18391- 18420 18421- 18450 18451- 18480 18481- 18510 18511- 18540 18541- 18570 18571- 18600 18601- 18630 18631- 18660 18661- 18690 18691- 18720 18721- 18750 18751- 18780 18781- 18810 18811- 18840 18841- 18870 18871- 18900 18901- 18930 18931- 18960 18961- 18990 18991- 19020 19021- 19050 19051- 19080 19081- 19110 19111- 19140 19141- 19170 19171- 19200 19201- 19230 19231- 19260 19261- 19290 19291- 19320 19321- 19350 19351- 19380 19381- 19410 19411- 19440 19441- 19470 19471- 19500 19501- 19530 19531- 19560 19561- 19590 19591- 19620 19621- 19650 19651- 19680 19681- 19710 19711- 19740 19741- 19770 19771- 19800 19801- 19830 19831- 19860 19861- 19890 19891- 19920 19921- 19950 19951- 19980 19981- 20010 20011- 20040 20041- 20070 20071- 20100 20101- 20130 20131- 20160 20161- 20190 20191- 20220 20221- 20250 20251- 20280 20281- 20310 20311- 20340 20341- 20370 20371- 20400 20401- 20430 20431- 20460 20461- 20490 20491- 20520 20521- 20550 20551- 20580 20581- 20610 20611- 20640 20641- 20670 20671- 20700 20701- 20730 20731- 20760 20761- 20790 20791- 20820 20821- 20850 20851- 20880 20881- 20910 20911- 20940 20941- 20970 20971- 21000 21001- 21030 21031- 21060 21061- 21090 21091- 21120 21121- 21150 21151- 21180 21181- 21210 21211- 21240 21241- 21270 21271- 21300 21301- 21330 21331- 21360 21361- 21390 21391- 21420 21421- 21450 21451- 21480 21481- 21510 21511- 21540 21541- 21570 21571- 21600 21601- 21630 21631- 21660 21661- 21690 21691- 21720 21721- 21750 21751- 21780 21781- 21810 21811- 21840 21841- 21870 21871- 21900 21901- 21930 21931- 21960 21961- 21990 21991- 22020 22021- 22050 22051- 22080 22081- 22110 22111- 22140 22141- 22170 22171- 22200 22201- 22230 22231- 22260 22261- 22290 22291- 22320 22321- 22350 22351- 22380 22381- 22410 22411- 22440 22441- 22470 22471- 22500 22501- 22530 22531- 22560 22561- 22590 22591- 22620 22621- 22650 22651- 22680 22681- 22710 22711- 22740 22741- 22770 22771- 22800 22801- 22830 22831- 22860 22861- 22890 22891- 22920 22921- 22950 22951- 22980 22981- 23010 23011- 23040 23041- 23070 23071- 23100 23101- 23130 23131- 23160 23161- 23190 23191- 23220 23221- 23250 23251- 23280 23281- 23310 23311- 23340 23341- 23370 23371- 23400 23401- 23430 23431- 23460 23461- 23490 23491- 23520 23521- 23550 23551- 23580 23581- 23610 23611- 23640 23641- 23670 23671- 23700 23701- 23730 23731- 23760 23761- 23790 23791- 23820 23821- 23850 23851- 23880 23881- 23910 23911- 23940 23941- 23970 23971- 24000 24001- 24030 24031- 24060 24061- 24090 24091- 24120 24121- 24150 24151- 24180 24181- 24210 24211- 24240 24241- 24270 24271- 24300 24301- 24330 24331- 24360 24361- 24390 24391- 24420 24421- 24450 24451- 24480 24481- 24510 24511- 24540 24541- 24570 24571- 24600 24601- 24630 24631- 24660 24661- 24690 24691- 24720 24721- 24750 24751- 24780 24781- 24810 24811- 24840 24841- 24870 24871- 24900 24901- 24930 24931- 24960 24961- 24990 24991- 25020 25021- 25050 25051- 25080 25081- 25110 25111- 25140 25141- 25170 25171- 25200 25201- 25230 25231- 25260 25261- 25290 25291- 25320 25321- 25350 25351- 25380 25381- 25410 25411- 25440 25441- 25470 25471- 25500 25501- 25530 25531- 25560 25561- 25590 25591- 25620 25621- 25650 25651- 25680 25681- 25710 25711- 25740 25741- 25770 25771- 25800 25801- 25830 25831- 25860 25861- 25890 25891- 25920 25921- 25950 25951- 25980 25981- 26010 26011- 26040 26041- 26070 26071- 26100 26101- 26130 26131- 26160 26161- 26190 26191- 26220 26221- 26250 26251- 26280 26281- 26310 26311- 26340 26341- 26370 26371- 26400 26401- 26430 26431- 26460 26461- 26490 26491- 26520 26521- 26550 26551- 26580 26581- 26610 26611- 26640 26641- 26670 26671- 26700 26701- 26730 26731- 26760 26761- 26790 26791- 26820 26821- 26850 26851- 26880 26881- 26910 26911- 26940 26941- 26970 26971- 27000 27001- 27030 27031- 27060 27061- 27090 27091- 27120 27121- 27150 27151- 27180 27181- 27210 27211- 27240 27241- 27270 27271- 27300 27301- 27330 27331- 27360 27361- 27390 27391- 27420 27421- 27450 27451- 27480 27481- 27510 27511- 27540 27541- 27570 27571- 27600 27601- 27630 27631- 27660 27661- 27690 27691- 27720 27721- 27750 27751- 27780 27781- 27810 27811- 27840

BILLING MEMORANDUM 31481 01/31/84 PAGE 1 WILLIAM CLEMEN
 88213 MADISON GUARANTEE SAVINGS/LOAN
 MR. JOHN LATHAM, PRESIDENT
 16TH AND MAIN
 LITTLE ROCK, AR 72201

4 GENERAL

ATTY	DATE	TIME	MATTER	VALUE	DESCRIPTION OF SERVICES RENDERED	
HSC	11/16/83	1.50		42.50	CONFERENCE WITH SEMI HARB REGARDING PURCHASE FROM ORICK FILE	15440
HSC	11/20/83	1.00		125.00	CONFERENCE WITH B. JARDI CONFERENCE WITH W. HUBBELL	304
HSC	12/20/83	1.50		135.00	CONFERENCE WITH R. HASSETT	2240
SAG	12/27/83	1.50		60.00	CONFERENCE WITH R. HASSETT REGARDING RESERVATION OF MADISON CAPITAL CORPORATION AND FORM 80 TO FITTINCH TRANSMITTING ELEMENTS TO THE SECURITIES AND EXCHANGE COMMISSION (SEC) AND FORM 80 TO FITTINCH TRANSMITTING ELEMENTS TO THE SECURITIES AND EXCHANGE COMMISSION (SEC) NAME "MADISON CAPITAL CORPORATION" CORRESPONDENCE TO SECRETARY OF STATE TRANSMITTING FEE OF \$5 FOR RESERVATION OF CORPORATE NAME FOR PERIOD OF SIX MONTHS	7504

FEES TOTAL 4.00 372.50

ATTY	DATE	CHECK	DISB AMT	QUAN	DESCRIPTION OF DISBURSEMENT	
FIRM	12/27/83	578.66	3.00	25	RESERVATION OF CORPORATE NAME: MADISON CAPITAL CORPORATION	14978
					PHOTOCOPI EXPENSE (.15)	
DISB TOTAL			8.75			

TIME SUMMARY BY ATTORNEY

ATTORNEY	TIME	STANDARD	MATTER	AMOUNT
		VALUE	VALUE	TO BILL
18 SAG	1.50	40.00	40.00	
SHARON GRIMES	2.00	312.50	312.50	
9998 FIRM	4.00	372.50	372.50	
FIRM ATTORNEY		8.75	8.75	
TOTAL 9866		381.25	381.25	
TOTAL 9158				8.75

DKSN029008

1226

October 7, 1985

TO: Seth Ward

FROM: Jim McDougal

According to my calculations the commission on the sale of the two acres which was closed Friday was \$14,500. Please advise me how you wish this check made out and I will order it paid today. Also, I need to know the name of the buyer.

Apparently there is some opposition from existing land owners at 145th Street to the placement of mobile homes on our property. I think their opposition merely arises from ignorance as to the plans. However, we do need to check to see if there is an existing Bill of Assurance on the property which would prohibit our planned use. Further, it is my understanding that the Planning Commission regulations require that adjoining land owners be given notice by registered mail of a planned subdivision. You should ask our engineer about this procedure.

We need to proceed with the staking of lots. This will give us inventory to be selling on while Allison is getting his units moved in. We need to find out from Allison how many units he is moving and a description of the units. I understood at our last meeting that he would be sending some double wides and some single wides and that we would place them in different areas. We need to arrange to get the man who will be in charge of delivering the units and contact with Mr. Randolph to coordinate site preparation.

JM/ss



SW1-028

1227

LAW OFFICES OF
ROSE LAW FIRM
 A PROFESSIONAL CORPORATION
 120 EAST FOURTH STREET
 LITTLE ROCK, ARKANSAS 72201
 PHONE (501) 378-6131

+pt

CLIENT: ROBERT

WEDGON GUARANTY SAVINGS/LOAN
 1174 1/2 MAIN STREET
 LITTLE ROCK, AR 72202

OCTOBER 29, 1985
 INVOICE # 766

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #77-0408614) - RETURN THIS STATEMENT WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED IN CONNECTION WITH:

MATTER:

RECEIPT

09/10/85 T. THATCH

TELEPHONE CONFERENCE WITH SETH WARD;
 TELEPHONE CONFERENCE WITH LUTON POWEN
 AT SEACH ABSTRACT

10/07/85 T. THATCH

TELEPHONE CONFERENCE WITH SETH WARD,
 PEGGY ROGERS; REVIEW TITLE COMMITMENT

10/14/85 T. THATCH

TELEPHONE CONFERENCE WITH PEGGY
 ROGERS, STEVE WARD, DAVID ROVER AND
 SETH WARD; ATTEND CLOSING

10/17/85 T. THATCH

MEETING WITH SETH WARD; REVIEW BILL OF
 ASSURANCES

TOTAL FOR SERVICES

1050.00

TOTAL THIS STATEMENT

1050.00

W/A

PAID 550.00
 CK #
 DATE 11-19-85

DKSN028980

ROSE LAW FIRM

Chairman Seidman
Mr. Rosen
Mr. Thomas
Mr. Monahan
Mr. Braceley

Mr. Jacobs
~~Mr. Seidman~~
Mr. Roelle
Mr. Dudine
Mr. Martinelli, R/D

February 26, 1991

Memorandum To: Gerald Jacobs
Special Counsel to the RTC
and
William Roelle
Deputy Executive Director

From: April Breslaw
Senior Attorney *ARB*

Re: 7236 Madison Guaranty Savings and Loan
Augusta, Ark. - In Receivership

Request for Authorization to Accept
Settlement Offer

RECOMMENDATION

This memorandum requests authority to settle a pending accounting malpractice case by accepting the \$1,025,000 offered by CMA and Forster ("C&F"), the carrier which provided defendant Frost and Company ("Frost") with liability coverage.

C&F has not given a specific date on which its offer expires. However, our case is scheduled for trial on March 26, 1991. If authorization to accept the carrier's offer is granted by March 15, 1991, we will save the expense of the final two weeks of trial preparation. We estimate this amount to be approximately \$50,000.

1 Past experience indicates that C&F displays more serious interest in settlement as a trial date approaches. In this case, we do not believe that C&F is aware that there is a real chance that our trial will be rescheduled for next Fall. If C&F becomes aware of this possibility, it may rescind the offer, invest the settlement funds, and resume bargaining with us in eight to ten months. Avoiding this contingency is another reason to evaluate the outstanding offer quickly.

PROVIDED AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

AB0198

Memorandum to Mr. Jacobs and Mr. Roelle
Page 2

Elements of the Claim

In order to prevail, we must prove the existence of:

- (1) an audit failure
- (2) which caused
- (3) loss.

1. Audit Failure

Frost audited the Madison Guaranty Savings and Loan ("Madison") financial statements for 1984 and 1985. In each instance, an unqualified opinion, i.e., one which concluded that the statements fairly reflected the S&L's financial condition, was issued. However, the FHLBB's 1986 examination found significant deficiencies in Madison's accounting treatment of real estate development projects, subsidiary investment, and reserve for loan losses. The adjustments imposed as a result of this examination rendered Madison insolvent.

Madison subsequently retained Peat, Marwick, Main and Company to re-audit the statements first evaluated by Frost. Peat, Marwick reached two conclusions: first, that Madison's internal controls were so poor that the S&L's financial statements were virtually incapable of audit and second, that there was serious question about Madison's ability to continue as a going concern. Because these were very different conclusions than those reached in the initial audits, Madison sued Frost for malpractice.

We inherited the case when Madison was placed in conservatorship in 1989.² Investigation by in-house CPA Lee Sorenson of NCCO supports the conclusion that audit failure occurred. Most significant, Frost did not calculate Madison's loan loss reserve by performing detailed review of specific loans. Instead, Frost simply allotted one per cent of the outstanding balance of each relevant category of loans to the reserve. Further, Frost failed to test the adequacy of any of the appraisals in Madison's files and entirely based its past-due loan testwork on information provided by Madison's management. No attempt to verify this information through appraisal or financial statement data was made.

Our independent expert has testified that Frost should have evaluated the risk of loss in Madison's portfolio by classifying loans as bank examiners do. He's further testified that Laventhol and Horvath ("L&H"), the firm with which he was a partner until its recent bankruptcy, employed this approach to

² Since "final resolution" in October of 1990, we have pursued the matter on behalf of RTC Corporate.

AB0399/

Memorandum to Mr. Jacobs and Mr. Rodella
Page 3

bank and S&L audits as a standard practice.

Unfortunately, our expert has only been able to produce documentation which shows that LiH routinely handled bank audits in this manner. He has not been able to document standard practice for S&L audits. Further, Frost's attorneys have discovered an S&L audit performed by another LiH partner at about the same time as those at stake in this case in which a different method of evaluating risk of loss was employed. If the case is tried, Frost's attorneys will certainly use these inconsistencies to attack the credibility of our expert.

It is, however, worth noting that the relevant accounting standards do not require that an auditor use any specific method of evaluating risk of loan loss. Instead, they require only that a method be used which considers the overall circumstances surrounding the tested transactions. In its re-audit of Madison, Peat Marvick used a different method than the one recommended by our expert, but reached the same conclusions. Because Frost did not employ any such method, we should be able to prove that its audits are flawed - regardless of the problems with our expert's testimony. Overall, our chance of prevailing on this element of the case is approximately 70 per cent.

2. Causation

In any accounting malpractice case, we must show that the relevant S&L relied on the flawed audits to make subsequent business decisions. Put another way, we must show that but for its reliance on flawed audits, the S&L would have stopped or slowed investment in the speculative projects which ultimately caused loss. In an Arkansas malpractice case, we must show that in comparison with other possible causes, the defendant auditor was more than 50% responsible for the loss which resulted from its flawed audits.

In this case, we will have a series of problems demonstrating that Madison relied on the audits to make decisions. First, Madison CEO John Latham plead guilty to bank fraud charges last Spring. It is highly unlikely that different audits would have influenced his decision making. Second, Madison's board of directors was passive. For the most part, it did what Latham and primary shareholder McDougal told it to do. Even today, only one

³ Contrary to our expert's initial testimony, it appears that LiH did not have a standard approach to S&L audits.

⁴ McDougal was tried for bank fraud last Spring. Mainly through prosecutorial error, he was acquitted.

HQUSE

AB0400

Memorandum to Mr. Jacobs and Mr. McElla
Page 4

director is willing to testify that he would have voted against additional risky real estate development lending if Madison's outside auditor had generated critical audits.

Much of the loss which underlies our case is attributable to abusive insider transactions. Consequently, if Frost is able to introduce evidence of the contributory negligence of the individuals who initiated and approved these transactions, i.e., the reckless insiders and passive outsiders, we probably have only a 40% chance of proving that auditors are more than half responsible for the loss which ensued.

In response to this problem, we have asked the court to issue an order which prevents the introduction of evidence at trial of the inappropriate manner in which the Madison directors and officers managed the institution. We've based our request on a line of cases which have held that the only evidence of audit client mismanagement admissible in an accountant liability suit is evidence that the audit client provided the accountant with false financial information to audit.

This is the first time that this argument has been made in Arkansas. Last year, it was rejected in Minnesota, another state within the 8th Circuit. It's been accepted in a scattered mix of jurisdictions across the country, including a recent 10th Circuit decision which interpreted the law of Oklahoma, Arkansas' neighbor. We estimate that we have a 50% chance of winning the motion which raises this issue.

If our evidentiary motion succeeds, our chance of proving that Frost is more than half responsible for the relevant loss improves. However, Frost will do everything possible to convince the jury that the loss occurred because of events outside its control. We believe that Frost will argue that the downturn in the Arkansas economy contributed to the loss. We also believe that Frost will claim that the FHLBB contributed to the loss by accepting Madison business plans which tolerated continued real estate development lending. Finally, Frost will attack the Arkansas regulators for failing to close Madison when it became insolvent.

We have asked the court to issue an order which prevents the introduction of evidence of regulatory contributory negligence at trial. This request is based a very strong line of cases which holds that bank and thrift regulators' duty to perform responsibly runs only to the public. It does not run to the directors, officers and other professionals affiliated with a failed institution. We are almost certain to obtain the evidentiary order which we seek on this point.

HOUSZ

However, it was the contrast between the Frost audits and the

AB0401

Memorandum to Mr. Jacobs and Mr. Roelle
Page 3

results of the FHLBB 1986 examination which prompted Madison to investigate audit failure. (See above.) Consequently, Frost has subpoenaed the relevant examiner and supervisory agent. Its attorneys will certainly try to steer these individuals' testimony away from its proper purpose - confirmation that an audit failure occurred - and toward evidence of regulatory mistake. Assuming that we obtain the order which eliminates evidence of regulatory negligence from the case, we will object to this tactic. However, the jury may find the process confusing.

In this regard, it is worth mentioning that our case is pending in a fairly widespread federal district. As a result, our jury will be drawn from both Little Rock and outlying rural areas. Consequently, there is some risk that the jury will not have the sophistication to understand the more complicated aspects of our argument.

Mr. Roelle is from

To summarize: Assuming that we win both of our evidentiary motions, i.e., that evidence of both director/officer contributory negligence and regulatory contributory negligence is officially eliminated from the case, we have approximately a 60% chance of proving that auditors are more than half responsible for the loss which underlies this action.

REMARKS

3. Loss

Frost cannot be held responsible for loss incurred prior to its involvement with Madison. Further, Frost cannot be held liable for loss recklessly incurred by Madison after it was notified that the audits were flawed. Keeping these parameters in mind, we believe that our damage window runs from July 18, 1985 to July 11, 1986. The first of these dates reflects the point at which Madison's Board reviewed and began to rely on the C&D audit. The second reflects the point at which the board was notified of potential flaws in Frost's conclusions through receipt of the FHLBB 1986 examination and proposed Cease and Desist Order. During this period, principal advances were made which have generated approximately \$7,000,000 in loss.

Financial Analysis of Proposed Settlement

The \$7,000,000 policy issued by C&F is our recovery source.⁵ The following calculations translate the above discussion into numerical terms.

⁵ Frost is a small firm with almost insignificant resources. Absorbing the insurance policy's \$50,000 deductible with ^{100%} its contribution to the settlement.

Memorandum to Mr. Jacobs and Mr. Roelle

Page 4

First scenario:

.70 (chance of proving ~~audit~~ failure)
 x .40 (chance of proving causation if evidence of
 director/officer contributory negligence is admissible)
 = .28
 .28 x \$3,000,000 (insurance policy) = \$840,000

Second scenario:

.70 (chance of proving audit failure)
 x .60 (chance of proving causation if evidence of director
 & officer contributory negligence is not admissible)
 = .42
 .42 x \$3,000,000 (insurance policy) = \$1,260,000

The difference between calculations for the two scenarios
 (\$1,260,000 - \$420,000) = \$840,000.

\$420,000
 x .50 (chance of excluding evidence of director/officer
 contributory negligence by winning pending
 motion)
 = \$210,000

Improving \$840,000, our causation worst case scenario, by
 \$210,000 to reflect our chance of winning the pending evidentiary
 motion leaves us with a settlement figure of \$1,050,000.

However, because the judge is behind schedule, he may postpone
 our trial. The trial of a case of this complexity will take
 approximately a month. A month block of court time is not likely
 to become available until the Fall of 1991. If time is allotted
 for the trial itself, jury deliberation, post judgement motions,
 and the court's final ruling, it becomes apparent that if the
 trial is not held in March of 1990, we will not received the
 proceeds of a judgement for six months to a year.

The present value of our \$1,050,000 settlement figure received in
 six months is \$1,014,500. The present value of our \$1,050,000
 settlement figure received in one year is \$981,308. The current
 \$1,035,000 offer exceeds both.

To date, we have incurred approximately \$150,000 in legal fees
 and \$40,000 in expert fees. Final preparation and trial of this
 matter is likely to add about \$75,000 in legal fees and \$10,000
 in expert fees to our cost. Accepting the carrier's offer would

AB0403

Memorandum to Mr. Jacobs and Mr. Roelle
Page 7

therefore enable us to save \$85,000.

Conclusion

For the foregoing reasons, I recommend that we settle this matter by accepting the carrier's \$1,015,000 offer.

CONCUR:

John Beaty
John Beaty
Assistant General Counsel
Legal Division

Michael Martinelli
Michael Martinelli
Regional Director, RTC-Central

Gerald Jacobs
Gerald Jacobs
Special Counsel to the RTC
Legal Division

William Roelle
William Roelle
Deputy Executive Director
RTC

HOUSE

AB0404

CONFIDENTIAL

(a) Were YOU billing partner for matters nos. 1 through 4, all of which were opened in 1985? [Matters nos. 1 through 4 were "Stock Offering," "Limited Partnership," "Bibler" and "General."]

Yes.

(b) Was Webster Hubbell the billing partner for MADISON GUARANTY matter no. 5, entitled "I.D.C.," which was opened on or about August 2, 1985?

No, based on the time records, I believe that I was.

(c) If so, why was Webster Hubbell, rather than YOU, the billing partner for matter no. 5?

Please see my response to No. 62(b), supra.

Interrogatory No. 63: Identify the lawyers at the Rose Law Firm who had responsibility for obtaining Madison Guaranty matter no. 5 ("I.D.C.") for the Rose Law Firm. If the matter came to the Rose Law Firm without any solicitation on the part of the Rose Law Firm, identify the lawyer or lawyers at the Rose Law Firm to whom the matter was referred by the client or clients, and identified with respect to MADISON GUARANTY matter no. 5.

I do not recall how or why the Rose Law Firm was asked to give legal advice concerning IDC, or who was responsible for this.

Interrogatory No. 64: DESCRIBE the work YOU performed with respect to MADISON GUARANTY matter No. 5.

I remember almost nothing about this work, but after reviewing certain memoranda prepared by Rose Law Firm lawyer Rick Donovan and copies of the Rose Law Firm billing records for the Madison Guaranty matter (which have been furnished to the RTC), I believe that the work I did on this matter consisted primarily of supervising research concerning legal issues, such

CONFIDENTIAL

as whether it would be legal to open a tasting room for a proposed brewery, in light of the fact that the land was, arguably, located in what had once been a "dry" township, and other questions relating to the provision of water and sewer service by a utility which was located within the IDC PROPERTY. I believe that, based upon my time records, I conferred with Seth Ward on several occasions, and I believe that I would have discussed the legal research the firm was conducting, but I have no recollection of the content of these conversations. Also, as previously indicated, I believe that I had some limited involvement with an option agreement between Mr. Ward and Madison Financial (which appears to have been billed as a "General" rather than an "IDC" matter) although I have no recollection of that project.

Interrogatory No. 55: DESCRIBE the work Webster Hubbell performed with respect to MADISON GUARANTY matter no. 5.

I do not know what work, if any, Webster Hubbell performed with respect to the IDC matter. According to the billing records, copies of which my counsel have furnished to the RTC, he does not appear to have billed any time to the matter.

Interrogatory No. 56: DESCRIBE the work Thomas P. Thrash performed with respect to MADISON GUARANTY matter no. 5.

I have no recollection of what work Mr. Thrash did, but the billing records my counsel have furnished to the RTC show that he billed time for some real estate work on the IDC matter.

BILLING MEMORANDUM 43945 05/13/86 PAGE 3 HILLARY CLINTON
08742 MADISON GUARANTEE SAVINGS/LOAN MADISON GUARANTEE SAVINGS/LOAN
MR. JOHN LATHAM, PRESIDENT 16TH AND MAIN STREETS
LITTLE ROCK, AR 72202
LITTLE ROCK, AR 72201
S I.D.C.

ATTY	DATE	TIME	MATTER	DESCRIPTION OF SERVICES RENDERED
MRC	06/07/86	.20	29.00	TELEPHONE CONFERENCE WITH DON DENTON
FEES TOTAL		.20	29.00	

TIME SUMMARY BY ATTORNEY

ATTORNEY	TIME	STANDARD VALUE	MATTER VALUE	AMOUNT TO BILL	DISB
63 MRC HILLARY CLINTON	.20	28.00	28.00	70.00	
9858 FIRM FIRM ATTORNEY	.00		RAA	48.00	
TOTAL FEES	.20	28.00	28.00	140.00	
TOTAL DISB		3.00	3.00		3.00
		31.00	31.00		

AGED TIME AND DISB 05/13/86	0- 30	61- 90	91- 120	121- 150	151+
TIME WORKED					
MATTER VALUE	.20				
STANDARD VALUE	28.00				
DISBURSEMENTS	3.00				

PERIOD TYPE: 3 TIME & DISB BILL TYPE: 1 REGULAR
TIME START: 01/01/01 TIME END: 12/31/89 DISB START: 01/01/01 DISB END: 12/31/99
BILLING FREQUENCY: MONTHLY BILL FORMAT: 134 F
MATTER VALUE CALCULATION: STANDARD RATE: A
CC MATTER. STANDARD RATE: A

CODE

DATE

8-5-95

TYPE OF DOCUMENT

NAME

WASH. POST

COMMENTS [256 total spaces]

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TOPIC

SUBTOPIC

The Washington Post

Report Reveals Rose Firm Role In Land Deal

*Mrs. Clinton a Partner
At Time of Legal Work*

By Susan Schmidt
and Sharon LaFreniere
Washington Post Staff Writers

The Rose Law Firm did the legal work on a 1985 land deal for Madison Guaranty Savings & Loan that involved "fictitious" transactions and led to losses large enough to bankrupt the S&L, the inspector general of the Resolution Trust Corp. reported yesterday.

The deal, which involved several prominent Arkansans, including the current governor, was criticized as early as 1986 by bank examiners who said Madison relied on a straw buyer to purchase the land. But it was not previously known that the Little Rock firm in which first lady Hillary Rodham Clinton was then a partner worked on the legal issues surrounding the 1,100-acre industrial and trailer park development.

Hillary Clinton was one of 11 Rose lawyers who worked on the project known as Castle Grande, but the exact nature of her role is not entirely clear from the summary of the RTC report.

According to RTC inspector general Jack Adair, the Rose firm represented Madison in the purchase of the land in 1985 and in state regulatory issues involving a water and sewer system and a brewery that was to be built on the site. The summary did not say whether Rose law-

yers were aware of the phony nature of the land transactions.

However, Adair strongly criticized Rose for failing to disclose its involvement in the project as well as other work it did for Madison when the RTC hired the firm after the thrift failed to pursue and settle a legal case against Madison's accountants.

The firm had many other undisclosed conflicts of interest in government work it did arising out of S&L failures, the report said. Rose had conflicts of interest in six of 16 cases the government hired it to pursue between 1989 and 1994, as well as in two other cases involving the RTC in which Rose represented another party, the inspector general said.

The RTC report was the third time in less than two months the Rose Law Firm has been criticized for the way it handled its work for federal agencies involved in cleaning up the S&L crisis. In June an RTC audit questioned \$446,000 of Rose's RTC bills, almost a third of what the firm was paid. On Monday, the Federal Deposit Insurance Corp. criticized the firm for numerous conflicts of interest in its government work.

The inspector general's office forwarded the report and recommendations to agency head Jack Ryan yesterday. Officials in Adair's office declined to say what action they recommended; the RTC has been weighing whether to bring a civil claim against the firm.

In addition, the inspector general's findings have been turned over to Whitewater independent counsel Kenneth W. Starr, who

is conducting a criminal investigation. Law firms that do work for the government are required to certify in writing whether they have any conflicting legal engagements. The deliberate failure to disclose that information is a crime.

Hillary Clinton was the billing partner on work the firm did for Madison in the mid-1980s. After the S&L failed, her onetime partner, Webster L. Hubbell, won the RTC's business in pursuing Madison's accountants. Hubbell has since pleaded guilty to defrauding the firm and his clients, including the RTC and FDIC, and reports to prison next week.

An attorney representing the Rose firm, Aiden Atkins, blamed Hubbell yesterday for failing to tell the RTC of Rose's work for Madison. "The allegedly false statements are almost entirely by Hubbell, they are all by Hubbell," Atkins said.

He said that despite the lack of disclosure, the RTC auditors were wrong in concluding the firm's past work should have barred them from working for the federal agency. "The clods who were doing the investigation had no idea of what they were looking for," he said. "They had no idea of the rules of ethics."

Atkins said Hillary Clinton's work on Castle Grande was limited to regulatory questions. "She didn't handle the closing or sale of the property," he said. "A lot of the work did not go through her."

Rose's work is likely to be examined in hearings that the House Banking Committee will conduct on Whitewater starting Monday. The panel also plans to hear testimony about how the Madison S&L was run, and about its

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The Washington Post

ties to the Whitewater real estate venture co-owned by President Clinton and Hillary Clinton and Madison owner James B. McDougal and his ex-wife, Susan McDougal.

Lawyers for the Clintons had no immediate comment on the 47-page report, which is a summary of a huge document that has not been released. But the White House made available written responses from the president and his wife to a series of questions from the RTC in May that covered a range

regulation from purchasing the entire 1,100-acre property outright for development, so McDougal got one of his employees, Seth Ward—Hubbell's father-in-law—to buy some of the property in his own name, with Madison providing a loan for the entire amount and promising Ward hundreds of thousands of dollars in commission for his trouble as the property was sold off. Under the terms of the loan, Madison could not sue Ward if he failed to repay the loan.

Rose lawyers prepared purchase agreements and attended the closing as counsel for the purchasers.

The Castle Grande transactions violated federal regulations, Adair, the RTC inspector general, said, because they were done without adequate appraisals and without the permission of federal regulators who were trying to rein in the free-wheeling savings and loan.

If Madison had accurately related the losses related to the Castle Grande development, the S&L would have been considered insolvent, bank examiners found when they descended on the thrift in the spring of 1986. Federal regulators demanded McDougal's ouster in mid-July, and Hillary Clinton terminated Rose's retainer arrangement with Madison three days later.

The inspector general was particularly critical of the Rose Law Firm's work on Castle Grande because its lawyers knew the thrift was already in financial trouble.

"At the time it assisted Madison Guaranty with the Castle Grande deal, Rose Law Firm was aware of regulatory concerns about the soundness of the institution, particularly its net worth, through its representation of

Madison Guaranty on applications with the Arkansas Securities Department to issue preferred stock and to commence broker/dealer operations," the summary report said.

Rose's work on the stock plan is another of the undisclosed conflicts cited by the inspector general. The struggling S&L wanted approval to raise more capital by selling stock. As part of that effort, Rose presented statements prepared by the accounting firm of Frost & Co.—the organization it later sued for the RTC—showing that Madison was in good financial shape, although the thrift was actually close to insolvency, another government audit showed.

When the prospect of Madison work on the stock deal came up, Hillary Clinton said in response to RTC questions, she helped her firm work out an arrangement to assure it would be paid. But she said, "I was not 'in charge' of the Rose Law Firm's work for Madison in 1985-86, although I was the billing partner."

Instead, she said, Richard Massey, a Rose lawyer who specialized in securities, represented Madison on the stock issue before the Arkansas state securities board.

"I was not involved in the day to day work," Clinton said. As far as she knows, she said, her name appears only three times "in the many documents exchanged by Rose and the state regulators."

Hillary Clinton billed Madison \$4,172 for work on Castle Grande and the stock proposal, according to documents released yesterday.

"She didn't handle the closing or sale of the property," Alden Atkins, an attorney for the Rose Law Firm, said of Hillary Rodham Clinton. "A lot of the work did not go through her."

of Whitewater issues, including the Rose Law Firm's work for Madison.

The first lady was not asked specifically about Castle Grande in the interrogatories, but she generally described her work at the Rose firm for Madison as very limited.

The Castle Grande property was one of Madison's biggest and most criticized real estate deals. The S&L was barred by state



INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, FEBRUARY 7, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:12 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Mr. Hubbell.
[Witness sworn in.]

SWORN TESTIMONY OF WEBSTER L. HUBBELL FORMER ASSOCIATE ATTORNEY GENERAL U.S. DEPARTMENT OF JUSTICE

Mr. HUBBELL. I do promise.

The CHAIRMAN. I think I will, just for the purposes of the record, indicate that Mr. Hubbell is accompanied by his attorney; is that correct?

Mr. HUBBELL. Yes, Senator. This is John Niels with the firm of Howrey & Simon.

The CHAIRMAN. Mr. Hubbell, do you have any statement that you would like to give?

Mr. HUBBELL. No, Senator.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Hubbell, back in 1985 and 1986, you had a number of conversations with your father-in-law, Seth Ward, about his work and his dealings with Mr. McDougal in the transactions that he was engaged in with Mr. McDougal; isn't that correct?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. You talked to him about the transactions before he started to engage in them?

Mr. HUBBELL. I knew that he had gone to work for Madison and I knew that he was looking at various projects for Madison, and I knew one of them was the IDC property, yes.

Mr. CHERTOFF. You knew that he was, in fact, going to take part of the property in his own name and hold it on behalf of Madison?

Mr. HUBBELL. I don't believe that I knew that before the fact, Mr. Chertoff.

Mr. CHERTOFF. Did you know it after the fact?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. You knew it from Mr. Ward?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. When did Mr. Ward tell you about it?

Mr. HUBBELL. Sometime after the transaction closed.

Mr. CHERTOFF. Would that be within a couple of weeks?

Mr. HUBBELL. I'm sure it was.

Mr. CHERTOFF. You understood that the reason Mr. Ward took the property in his own name and held it in his name on behalf of Madison was because Madison had legal limits on the amount of property it could own directly; right?

Mr. HUBBELL. I am not sure that I knew as a lawyer. I knew one of the reasons that was given was that there were limits on the amount of property the holding company—not the holding company, but its real estate subsidiary could hold.

Mr. CHERTOFF. So in order to avoid that limit, Mr. Ward held some of the property in his own name; right?

Mr. HUBBELL. They structured the transaction that way, yes.

Mr. CHERTOFF. That was designed to evade a regulatory limitation; right?

Mr. HUBBELL. I do not know what it was designed to do, Mr. Chertoff.

Mr. CHERTOFF. You knew it had the effect of evading a regulatory limitation?

Mr. HUBBELL. I don't know that one way or the other.

Mr. CHERTOFF. Let me go to your telephone interview this past December with, I guess, it was representatives of the RTC. I think we are going to put it in front of you right now. It is Senate 22409, page 22 of the transcript of this interview. Actually, we are going back to the bottom of page 21, the question was:

Question: At this time, September 1985, what was your understanding, if any, with respect to the reasons why Madison was not going to buy the entire property itself?

Answer: My understanding was based on what Mr. Ward told me, that maybe whoever closed the loan was—was that Madison had limits on what it could own in its own name, and so Mr. Ward was going to own part of it until it could be sold.

Is that correct?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. That was your sworn testimony back in December; is that right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Would you agree with me that during this period of time, 1985 to 1986, Mr. Ward spoke to you about his deals with Madison all the time?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. I mean, you basically could not get him to stop talking about it; is that right?

Mr. HUBBELL. Mr. Ward talked about business quite often, yes.

Mr. CHERTOFF. And even if you were socializing, he was talking about business?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Did he tell you that Mrs. Clinton had been involved in drafting the option on about 22 acres of land in Castle Grande known as Holman Acres?

Mr. HUBBELL. Mr. Chertoff, I don't remember him telling me that. It's certainly possible that I knew it back in 1986.

Mr. CHERTOFF. Did Mrs. Clinton tell you about it?

Mr. HUBBELL. Not that I recall, but it's certainly possible.

Mr. CHERTOFF. Did you used to give Mr. Ward legal help in some of his transactions as a relative?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did you ever get asked to help him with respect to the option?

Mr. HUBBELL. I don't remember. I don't believe so, but I don't remember.

Mr. CHERTOFF. I take it you know now, based on records that have recently been discovered, you have been made aware of the fact that Mrs. Clinton did, in fact, do work in preparation of the option for Holman Acres. You know that now; right?

Mr. HUBBELL. I know that she prepared an option on 22 acres. If that's Holman Acres, that's fine.

Mr. CHERTOFF. You can't tell us whether you knew that back in 1986?

Mr. HUBBELL. No, I cannot.

Mr. CHERTOFF. Can you help us to understand why it was that Mr. Ward would have gone to Mrs. Clinton to help him draft an option rather than to you?

Mr. HUBBELL. She was representing Madison.

Mr. CHERTOFF. Who was representing Ward with respect to the option?

Mr. HUBBELL. Mrs. Clinton.

Mr. CHERTOFF. So Mrs. Clinton was representing both Madison and Ward?

Mr. HUBBELL. That's my understanding.

Mr. CHERTOFF. Your understanding—

Mr. HUBBELL. Let me go back. I am not sure I even know about the option. I mean, I knew there were discussions of options, but I am not sure I knew that Mrs. Clinton prepared it. The way it appears to me is that, like the initial transaction, the firm was representing both Mr. Ward and Madison. I don't know that, but that's the way it appears from what I have seen in the newspaper.

Mr. CHERTOFF. You understood at the time, back in 1985, that in fact the firm was, at least in the initial stages of the IDC purchase, representing Madison and Ward and Madison Financial?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. So all three of these supposedly distinct parties, Madison Financial, which bought part of the property, Seth Ward, which bought the other part on behalf of Madison Financial, and Madison Guaranty, which did the financing, all three were represented by one firm?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. It's your understanding that throughout the work that was done involving this piece of property known as IDC, it was the Rose Law Firm that represented Ward in anything that he needed representation in?

Mr. HUBBELL. I don't know that, and the reason I am hesitant to say that, Mike, and I am really not sure it is relevant to the inquiry, is because when the property was sold, for example, to Senator Fulbright or Governor Tucker, my understanding was that the Mitchell Firm represented everybody who was involved in those transactions. I may be wrong, that was just my understanding. So, technically, they were representing Mr. Ward in those transactions as well.

Mr. CHERTOFF. What about in the transactions where Mr. Ward was engaging in transactions with Madison? Who was representing the parties in that?

Mr. HUBBELL. You'll have to give me an example.

Mr. CHERTOFF. In the initial purchase—

Mr. HUBBELL. In the initial purchase, the Rose Firm handled the closing, yes.

Mr. CHERTOFF. And handled it on behalf of Ward and Madison and Madison Savings & Loan; right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. In the preparation of the paperwork between Ward and McDougal, have you seen a letter dated September 24th that reflects an agreement between Ward and Madison?

Mr. HUBBELL. That's correct, I have.

Mr. CHERTOFF. Was that typed by your secretary?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. I am going to read to you from a deposition of Alston Jennings taken just yesterday. Do you know who Alston Jennings is?

Mr. HUBBELL. I sure do.

Mr. CHERTOFF. He is a senior partner at Wright, Lindsey & Jennings?

Mr. HUBBELL. One of the best trial lawyers I know.

Mr. CHERTOFF. You have no reason to doubt the accuracy of his testimony, do you?

Mr. HUBBELL. No, I do not.

Mr. CHERTOFF. I want to indicate to you at page 123—let's see if we can get it up to you.

Mr. BEN-VENISTE. This is Mr. Jennings' testimony.

Mr. CHERTOFF. This is Mr. Jennings' testimony, page 123, line 5.

Mr. BEN-VENISTE. I don't know that this witness has ever seen this testimony.

Mr. CHERTOFF. All right. If we don't have extra copies—it just came hot off the press—I will read it to you. Starting at line 5:

Question: And Mr. Ward was familiar with the preparation of all three, so if lawyers were involved, he would have been aware of that?

Answer: Absolutely.

Question: And I think this is clear, but Mr. Ward never indicated to you that Mr. Hubbell assisted him in the preparation of those letter agreements?

Answer: He indicated to me that Mr. Hubbell's secretary typed, I think, just one of the agreements.

Question: And do you recall which one that was?

Answer: I think it was the third one or the one that included the Holman Acres.

Do you remember having a discussion or seeing a document relating to this piece of property that your secretary typed?

Mr. HUBBELL. I remember that Mr. Ward would come to my office and, on occasion, ask my secretary to type letters that he had

handwritten or that had been drafted somewhere else. I don't know with this particular letter that you're talking about, whether he did or didn't. I think I've testified before that it's certainly possible.

Mr. CHERTOFF. In fact, would you agree with me that typically when he brought a document in to have your secretary type, she would bring it in and you would be sitting there with Mr. Ward and she would show it to both of you?

Mr. HUBBELL. My recollection was that he would give it to her or he would be sitting in an office and say do you mind if Martha or Debbie types this, and one or the other would come in and we would hand it to her, yes.

Mr. CHERTOFF. You would likely have seen a document after it was typed; right?

Mr. HUBBELL. Likely, yes.

Mr. CHERTOFF. Now is Mr. Ward a lawyer by training?

Mr. HUBBELL. No.

Mr. CHERTOFF. So I take it he is not in a position to do legal drafting on the specifics of property agreements that set forth metes and bounds and all the technical lawyer stuff that you get in real property documents; is that right?

Mr. HUBBELL. Well, no, I don't agree with that, not as a lawyer, but certainly he's capable of doing that because he has a brokerage license. They're trained to do that.

Mr. CHERTOFF. You think he was capable of preparing and drafting legal documents that set forth transfers of land?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did he used to consult with you about some of his real estate issues?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Was there any other lawyer you dealt with on real estate issues?

Mr. HUBBELL. I am thinking for a minute. Mr. Ward used lots of lawyers. Other than I assume you are saying lawyers within the firm?

Mr. CHERTOFF. Within the Rose Law Firm, yes.

Mr. HUBBELL. Other than lawyers within the firm?

Mr. CHERTOFF. Yes, other than lawyers within the Rose Law Firm.

Mr. HUBBELL. I believe I would be the only one that I can recall, except when I first started practicing.

Mr. CHERTOFF. I'm sorry, I didn't get the last part of that.

Mr. HUBBELL. Except when I first started practicing. He used another law firm when I first joined the Rose Law Firm.

Mr. CHERTOFF. Once you got underway with your practice, he used the Rose Law Firm?

Mr. HUBBELL. Most of the time, Mr. Chertoff. On occasion, he would use other lawyers.

Mr. CHERTOFF. Now can you search your memory from all the conversations you had with Mr. Ward back in 1985 and 1986 in which he was constantly talking about his business and tell us why it is that Mr. Ward went to Mrs. Clinton to prepare the option on this property?

Mr. HUBBELL. I don't recall that he did go to Mrs. Clinton, but I've seen records that he did. It doesn't surprise me that he went

to Mrs. Clinton. He was aware that Mrs. Clinton and the firm was on retainer and that she was doing work for Madison, and he used Mrs. Clinton—let me go back. He did a lot of legal work with Mrs. Clinton on other issues and, therefore, it doesn't surprise me.

Mr. CHERTOFF. Would you agree with me that this kind of transactional work was not her specialty?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Now when you were talking to the FDIC, later the RTC, about taking on the matter of representing them in their lawsuit against the Frost accountants, who had been the accountants for Madison back in the mid-1980's, there came a time when you had discussion with Ms. Breslaw concerning Seth Ward; isn't that correct?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did you indicate to Ms. Breslaw that your relationship with your father-in-law, Mr. Ward, was not a close one?

Mr. HUBBELL. Not that I know of.

Mr. CHERTOFF. I am going to read to you from her sworn testimony before the House of Representatives, which we'll give to you. It's pages 200 and 201. This is the testimony of April Breslaw, who is the FDIC attorney, and it regards her conversation with you concerning the Seth Ward relationship.

Now, you do remember there came a time that Ms. Breslaw contacted you because she had learned after the firm was retained that Seth Ward was your father-in-law. You remember the fact that you had a conversation with her?

Mr. HUBBELL. Yes, I remember having more than one, yes.

Mr. CHERTOFF. I want to read to you from line 21 of the statement given by Ms. Breslaw on page 200.

A few months after I had hired the Rose Firm, I learned that Seth Ward was Webster Hubbell's father-in-law and that Ward was in litigation with Madison. Under the ethical rules, an adverse interest by an in-law is not imputed to a lawyer. It is not a conflict of interest. Nevertheless, I asked Mr. Hubbell about the Ward matter. Mr. Hubbell told me that he was not representing Mr. Ward and that he would not do so in the future.

He also told me that his relationship with his father-in-law was not a close one. I recall him saying that Mr. Ward was an ardent Republican and that he was an active Democrat.

I want to ask you, did you tell Ms. Breslaw that your relationship with your father-in-law was not a close one?

Mr. HUBBELL. I don't remember that, Mr. Chertoff.

Mr. CHERTOFF. You would agree with me that, in fact, as you have testified here, you were intimately acquainted with the details of your father-in-law's business because in 1985 and 1986, he kept talking about it with you?

Mr. HUBBELL. I was familiar with it. I wouldn't say intimately familiar with it. That has a different context, Mike.

Mr. CHERTOFF. You also knew that the Rose Firm had done work on transactions involving IDC; right?

Mr. HUBBELL. I knew that we had closed the initial loan, yes.

Mr. CHERTOFF. You also knew or came to learn during the course of the representation of the Federal Government in this case against Frost that one of the very sets of transactions that was part of the damage calculation that the Government wanted to use against Frost involved these Ward loans?

Mr. HUBBELL. One of the projects that we looked at as potential damage calculations was the IDC loans and the subsequent loans after the initial purchase.

Mr. CHERTOFF. Did that prompt you at any time to go back to Ms. Breslaw and say, our firm was actually involved in some of the legal work relating to these loans; maybe we should drop this representation?

Mr. HUBBELL. I don't recall doing that, Mr. Chertoff.

Mr. CHERTOFF. When you say you don't recall doing that, do you mean you didn't do it? Is there any possibility that you went back to Ms. Breslaw and said, we were involved in the initial IDC closing, I'm aware of the fact that Mr. Ward was involved in subsequent transactions, he's discussed it with me, and we talked about it before and after? Did you disclose any of that to Ms. Breslaw?

Mr. HUBBELL. To April, no.

Mr. CHERTOFF. There came a time that the FDIC in 1993 was called in to reexamine this issue of whether the Rose Law Firm had a conflict. Do you remember that?

Mr. HUBBELL. In 1993?

Mr. CHERTOFF. Yes.

Mr. HUBBELL. Yes.

Mr. CHERTOFF. That was the first of a series of examinations of that, the last one of which was done by Ms. Black, who was here yesterday, which resulted in a referral to the Arkansas Bar Association. I want to come back to this first one. This was done by the FDIC regarding the issue of a conflict of interest when you were hired by the Government to go against the Frost Firm on Madison Guaranty. Do you remember getting a copy of the report on the retention of the Rose Law Firm which was the conclusion of the FDIC in this first investigation?

Mr. HUBBELL. Well, I saw a lot of reports, Mike, so you will have to help me there.

Mr. CHERTOFF. We are going to show it to you right now and it is document S 10097.

Mr. HUBBELL. I believe I saw a draft of this.

Mr. CHERTOFF. Did you, in fact, fax a copy of this to the White House?

Mr. HUBBELL. I could have.

Mr. CHERTOFF. Look at the top of the document. Do you see a fax line indicating this was something generated from 514-0238, DOJ/OAAG?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. That's your fax line; right?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. Is OAAG—

Mr. HUBBELL. I think that's my office, yes.

Mr. CHERTOFF. Do you doubt this was faxed by your office?

Mr. HUBBELL. I don't know. It certainly could have been.

Mr. CHERTOFF. I take it you read this?

Mr. HUBBELL. I read a draft. I'm not sure I got the final one, but I could have. I remember reading the draft.

Mr. CHERTOFF. How did you get a draft?

Mr. HUBBELL. I was sent a draft.

Mr. CHERTOFF. By the FDIC?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. For your comments?

Mr. HUBBELL. No. I was sent a draft the morning that they were issuing the final report.

Mr. CHERTOFF. I want to direct your attention in particular to page 3 of the report. If you go into the middle paragraph, the full sentence about midway through the paragraph, it indicates:

Richard Donovan, a partner with the Firm who worked on the case, states that he recalls Mr. Hubbell having advised the staff attorney of prior representation of the S&L on a matter involving the Arkansas Securities Commissioner. Mr. Hubbell's recollection differs. He recalls advising the staff attorney very generally that the Firm had done a small amount of work for the S&L years earlier, but that he did not view that as amounting to a conflict. He believes the work he was aware of was lending and collection work.

Now, Mr. Hubbell, would you agree with me that in 1985 and 1986, based upon your conversations with Mr. Ward, you understood that the Rose Firm had been involved in closing the transaction in which Mr. Ward acquired some of the property on behalf of Madison Financial?

Mr. HUBBELL. I knew in 1985 and 1986 that the firm had closed the IDC loan, yes.

Mr. CHERTOFF. From having had ongoing discussions with Mr. Ward, you were, in fact, aware generally of his business activities involving this property in 1985 and 1986?

Mr. HUBBELL. I knew there was a lot of activity, yes, and knew he was telling me who was buying up the parcels, yes.

Mr. CHERTOFF. Would you agree with me that this description in this report that was prepared by the FDIC, therefore, is not really an accurate representation of your degree of involvement with Mr. Ward and the firm's degree of involvement with Mr. Ward with Madison back in 1985 and 1986?

Mr. HUBBELL. The report states what I recalled in 1993. It's not what we did in 1985.

Mr. CHERTOFF. But in 1992, the year before this investigation was done, you looked at the billing records and the time sheets and the printouts—

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. —that contained all the information which we now finally know about concerning the work that was done by the Rose Law Firm for Madison; right?

Mr. HUBBELL. I did look at the billing records.

Mr. CHERTOFF. If you looked at those billing records, you saw what you described to Susan Thomases in 1992 as numerous conferences about the securities work; right?

Mr. HUBBELL. I saw that the firm had numerous conferences and Mrs. Clinton had conferences on the securities matter.

Mr. CHERTOFF. Your words as taken down by Ms. Thomases and attested to in this very room a month ago were "numerous conferences."

Mr. HUBBELL. OK.

Mr. CHERTOFF. Would you agree with me that those records also showed, and we can give them to you in a moment, Mrs. Clinton's involvement in preparation of the option?

Mr. HUBBELL. I have seen that she prepared the option, yes.

Mr. CHERTOFF. You saw it in 1992?

Mr. HUBBELL. I believe I did, because I remember looking at the bills. I don't have any specific recollection that I looked and saw preparation of option agreement in 1992.

Mr. CHERTOFF. You saw that she had a lot of calls with Seth Ward when you looked at the bills in 1992?

Mr. HUBBELL. Yes, I did.

Mr. CHERTOFF. Were you interviewed by the FDIC when they prepared this investigation a year later?

Mr. HUBBELL. Yes, I was.

Mr. CHERTOFF. Did you mention any of that to them?

Mr. HUBBELL. I don't believe so.

Mr. CHERTOFF. When you got this report, did you say to yourself, I know that there was more work we did for Madison than this report indicates?

Mr. HUBBELL. What this report indicates is what I told Ms. Breslaw in 1989.

Mr. CHERTOFF. What this report indicates is that the work you were aware of was lending and collection work. What this report indicates on page 2 is that in 1985, the firm represented the S&L before the Arkansas Securities Commissioner on two matters, the placement of the preferred stock and the application for the broker-dealer license. The people who wrote this report had no idea that the firm was involved in the option or closing the IDC transaction, which the regulators called a sham purchase, and you knew about that because you had looked at the records the year before in 1992.

Mr. HUBBELL. Mike, I don't want to mince words with you. I don't know what the FDIC knew. I assume they did know that. They would have a copy of the bills.

Mr. CHERTOFF. You thought they had the billing records?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. What gave you that impression?

Mr. HUBBELL. The bills were sent to the client, Madison.

Mr. CHERTOFF. So you assumed that they had the bills at Madison and therefore you didn't feel a need to lay out fully for the FDIC in 1993 what the Rose Law Firm's work had been as you had seen it just the year before when you reviewed the bills?

Mr. HUBBELL. In 1993 when I was interviewed, the focus was on the retention of the Rose Firm in 1989 and what was disclosed to Ms. Breslaw at that time and I have tried to recall to the best of my memory what I disclosed to April in 1989. Now that's what I thought the issue was at that point.

Mr. CHERTOFF. The issue was what was disclosed, but it was also what wasn't disclosed; right?

Mr. HUBBELL. I haven't looked at this report—I don't want to mince words with you—

Mr. CHERTOFF. You don't have to look at it, Mr. Hubbell. Just from having been Associate Attorney General of the United States, Chief Justice of the Arkansas Supreme Court, would you agree with me that if the issue is whether there was an undisclosed conflict of interest, whether you made full disclosure to the RTC when they hired you, you have to understand, do you not, that it's as important to know what you didn't tell them about what was going on as what you did tell them?

Mr. HUBBELL. I think what is important is what the client knew and what was disclosed at the time we were retained.

Mr. CHERTOFF. And you knew that one of the things that hadn't been disclosed to the client was all this work involving the IDC and the option and your personal involvement with Mr. Ward as he discussed his business arrangements with you incessantly. That wasn't disclosed, was it?

Mr. HUBBELL. It was not disclosed by me. That does not mean the client did not know.

Mr. CHERTOFF. As far as you knew, you hadn't made the disclosure; right?

Mr. HUBBELL. I did not make the disclosure, no.

Mr. CHERTOFF. By the way, you're not meaning to suggest to us that the client, Madison, would have gotten the printouts, that we now have discovered and that you saw back in 1992, that detail the attorney work?

Mr. HUBBELL. No, I meant they had the bills.

Mr. CHERTOFF. That is right. Bills don't disclose the amount of time spent on things; right?

Mr. HUBBELL. The ones that I've seen do not, no.

Mr. CHERTOFF. Now let me just ask you one question, and I am going to surrender the balance of my time to Senator Shelby.

The CHAIRMAN. Finish it up. He's going to take his when we swing back.

Mr. CHERTOFF. This document, this report was faxed over to the White House. Did you do that?

Mr. HUBBELL. I doubt if I personally did it. I might have asked my staff to do it.

Mr. CHERTOFF. I'm not suggesting you personally did it. Did you direct somebody to do it?

Mr. HUBBELL. It would not surprise me, but I don't remember one way or the other.

Mr. CHERTOFF. Did you discuss this issue with Mrs. Clinton?

Mr. HUBBELL. No.

Mr. CHERTOFF. You never had a discussion with her about this issue of the Rose Law Firm conflict of interest investigation going on with the FDIC?

Mr. HUBBELL. No.

Mr. CHERTOFF. Didn't you know she was concerned about it?

Mr. HUBBELL. No. I would only communicate on something like this with White House Counsel.

Mr. CHERTOFF. Why would White House Counsel be concerned about whether back in the mid-1980's the Rose Law Firm had had a conflict with respect to the FDIC?

Mr. HUBBELL. Because more than likely, there were going to be inquiries from the press.

Mr. CHERTOFF. The press. But you understood, Mr. Hubbell, that a greater concern than inquiries from the press would be the possibility of some kind of legal action; right?

Mr. HUBBELL. Did I think there was going to be legal action regarding a conflict of interest in 1989?

Mr. CHERTOFF. No. In 1993, when there was an FDIC investigation concerning this conflict issue, the issue of the Rose Law Firm conflict, you understood the FDIC wasn't investigating in order to

generate press stories. You understood they were investigating to see whether legal action had to be taken of some kind; right?

Mr. HUBBELL. No.

Mr. CHERTOFF. No. It never occurred to you that there would be any legal consequences to the investigation?

Mr. HUBBELL. No.

Mr. CHERTOFF. You thought they were just trying to satisfy idle curiosity?

Mr. HUBBELL. No, I didn't think it was idle curiosity.

Mr. CHERTOFF. What did you think they were going to do if they found a conflict?

Mr. HUBBELL. If they found a conflict, and there was an action, they would take it. I have confidence in that, but I think they were being asked to investigate a situation that occurred back in 1989 and they were doing so.

Mr. CHERTOFF. They were doing it to determine whether they should take some kind of legal action; right?

Mr. HUBBELL. I don't know why they were doing it, but my impression was they were getting the information because they were being requested to do so.

Mr. CHERTOFF. Now did you know that at the same period of time there were discussions about whether Mr. Altman, who was the acting head of the RTC, ought to recuse himself from handling matters related to Madison Guaranty Savings & Loan?

Mr. HUBBELL. At some point, I knew that there was discussion as to whether Mr. Altman should recuse or not.

Mr. CHERTOFF. When did you find that out?

Mr. HUBBELL. I can't tell you precisely.

Mr. CHERTOFF. Tell me generally.

Mr. HUBBELL. Sometime in September or October of 1993.

Mr. CHERTOFF. Of 199—

Mr. HUBBELL. 1993.

Mr. CHERTOFF. That's before February 1994, when Mr. Altman actually came in to meet with Mr. Nussbaum?

Mr. HUBBELL. No. Maybe I'm off a year. I know at some point I heard that Bernie was saying he was talking to Mr. Altman about recusal. Whenever that occurred, that's when I knew about it.

Mr. CHERTOFF. That occurred in February.

Mr. HUBBELL. I'm sorry, Mike.

Mr. CHERTOFF. Did Mr. Nussbaum tell you about that?

Mr. HUBBELL. He told me that he was having discussions with Altman regarding recusal, yes.

Mr. CHERTOFF. Did you tell him that that could have an impact on the Rose Law Firm conflict issue, which you were personally involved in?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. By the way, this is news to me because I don't think we've ever learned before that Mr. Nussbaum discussed this with you.

Mr. HUBBELL. He didn't discuss it. He told me.

Mr. CHERTOFF. That's still news to me. At the end of February, when Mr. Altman finally decided he was going to recuse himself because there was a threatened editorial in The New York Times, did you know that Mrs. Clinton asked to have both Mr. Ickes and

Mr. Eggleston prepare a memo for her regarding the effect of all of this upon the Rose Law Firm conflict issue?

Mr. HUBBELL. No.

Mr. CHERTOFF. Your testimony is that even though you knew in 1992 that Mrs. Clinton had personally worked on the Madison Guaranty matter, that she had had numerous conversations with Seth Ward, and had worked on the option, even though you knew that in 1992, even though you knew in 1993 that this was being investigated by the FDIC, even though Mr. Nussbaum told you that he was having discussions about Mr. Altman possibly recusing himself, you never, ever had a conversation with Hillary Clinton, who was your former partner, who had worked on this matter, who had talked to Mr. Ward, and who had worked on the option, about this issue of the Rose Law Firm conflict?

Mr. HUBBELL. That's correct, Mike. That's absolutely correct.

Mr. CHERTOFF. I think I'm out of time.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Mr. Hubbell.

Mr. HUBBELL. Good morning.

Mr. BEN-VENISTE. Let me talk for a moment about your relationship with Mr. Seth Ward. The conversation that you had with Ms. Breslaw occurred in 1989; is that correct?

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. And this was about the representation that we have been inquiring into in this Committee involving the IDC purchase, and the regulatory work done in connection with IDC occurred in 1985 and 1986. Now during the period 1985 and 1986, is it correct that Mr. Ward was a frequent visitor to your office at the Rose Law Firm?

Mr. HUBBELL. He was a frequent visitor to my office at the firm and Mrs. Clinton's.

Mr. BEN-VENISTE. Did he, from time to time, ask your secretary to type things for him?

Mr. HUBBELL. From time to time he would, yes.

Mr. BEN-VENISTE. Did he have his own secretary?

Mr. HUBBELL. Not that I know of. Mrs. Ward, on occasion, would type something for him, and he may have used people at Madison, but he didn't have a secretary, so to speak.

Mr. BEN-VENISTE. Now did there come a time when Mr. Ward suffered an accident?

Mr. HUBBELL. Yes, he suffered an accident in the late 1980's.

Mr. BEN-VENISTE. And I don't mean to pry into personal family relationships, but there's been some discussion about all this in the newspapers.

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. The accident occurred while he was helping to make some repairs or helping out in some way at your home?

Mr. HUBBELL. That's correct. He fell out of my window.

Mr. BEN-VENISTE. He fell off a ladder out of a window?

Mr. HUBBELL. He was standing outside of a window on the second story of my house and fell and broke his back.

Mr. BEN-VENISTE. Did your relationship with him change in some way after that accident in terms of the closeness of the relationship?

Mr. HUBBELL. Well, he was in a great deal of pain, and he had also suffered some other health problems that were pretty severe, so we spent a lot of time as a family helping each other and talking about things because he was in very poor health.

Mr. BEN-VENISTE. Let me go back to the question that was put to you in your telephone deposition. It was at page 23 of the transcript, which I take it you have in front of you?

Mr. NIELDS. It's been removed.

Mr. BEN-VENISTE. Could somebody bring back that transcript, please, and it would probably be helpful to leave it there. Page 23.

Mr. HUBBELL. OK.

Mr. BEN-VENISTE. If you will take a look at that, were you referring to the option which was prepared by Mrs. Clinton according to her billing records on May 1st, or were you referring to documents which were dated or prepared around September 24th?

Mr. HUBBELL. When I was talking about the financing statement?

Mr. BEN-VENISTE. No. When you were talking about your knowledge of the arrangements made between Mr. Ward and Madison Guaranty, you were referring to documents. Were you referring to the contract dated September 24th?

Mr. HUBBELL. If you're referencing my answer, I don't believe so, but I'm sure—I think we were talking about the—you're talking about Exhibit 12?

Mr. BEN-VENISTE. No. I was referring to your transcript.

Mr. HUBBELL. I must be on the wrong page. Page 23?

Mr. BEN-VENISTE. I guess it starts on page 22 and runs over to page 23. Let me go back and ask you the questions directly, rather than referring to a prior question. You were asked about whether you considered Mr. Ward to be a straw man in that transaction, and rather than ask you a bunch of leading questions, let me just ask you to provide this Committee with your understanding of what the relationship was between Mr. Ward and Madison Guaranty at the time of this purchase.

Mr. HUBBELL. I believe that he had some arrangement with Madison, contractual arrangement, where he was paid a modest salary and would receive a commission on real estate sold. That's my understanding. That's based on oral understandings of what his deal was.

Mr. BEN-VENISTE. What was your understanding about how it was that he came to take a portion of the IDC property in his name?

Mr. HUBBELL. My understanding, and that's, again, based on conversations, was that when it came close to closing, there was some concern about Madison taking all of the property in its name and that Mr. Ward offered to take a portion in his name until it was sold, if Madison would lend him the money to do so.

Mr. BEN-VENISTE. Was that the extent of your knowledge?

Mr. HUBBELL. It was all after the fact.

Mr. BEN-VENISTE. Right. Do you recall discussing that knowledge with anyone at the Rose Law Firm?

Mr. HUBBELL. I may have, but I don't have any recollection of it.

Mr. BEN-VENISTE. Was it your habit to discuss everything that Mr. Ward was telling you about his business dealings with everyone at the law firm?

Mr. HUBBELL. No, no. If anything, I would have asked the person who closed the loan what happened, but I don't recall doing that.

Mr. BEN-VENISTE. At the time that the Rose Law Firm was being considered for representation of the Government in connection with collecting funds on behalf of Madison Guaranty, as we have learned from prior testimony, there was an existing lawsuit pending against Frost & Company, the auditors for Madison Guaranty?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. And you were considered for the role of being the lead counsel in that suit?

Mr. HUBBELL. To substitute as lead trial counsel, yes.

Mr. BEN-VENISTE. At that point, you were asked, were you not, whether you had any conflict of interest?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Did you believe you had a conflict of interest?

Mr. HUBBELL. Not in connection with that litigation, no.

Mr. BEN-VENISTE. Now does a conflict of interest arise from the fact of Mr. Ward discussing his business dealings with you?

Mr. HUBBELL. Not in my opinion.

Mr. BEN-VENISTE. So, putting that to the side, then the question arises as to whether anything you knew about at the Rose Firm in connection with its representation of Madison created in your mind grounds for a conflict of interest. Was there any such?

Mr. HUBBELL. With regard to that litigation, I was not aware at that time of any conflict.

Mr. BEN-VENISTE. And in connection with the litigation, that case was ultimately settled?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Would you tell us, to the best of your recollection, the mechanics by which the settlement occurred?

Mr. HUBBELL. At some point, we began settlement negotiations with the lawyers and the insurance carrier for Frost & Company. There was an evaluation done by the insurance carrier. They used what was called a decision tree analysis, we would comment on that, and there was a lot of give and take between the insurance carrier and the client.

In any of these cases that you involve with the FDIC or the RTC, there's a lot of precedent, a lot of experience between the RTC or FDIC people and the carriers because they settle all the time. There was a lot of give and take, and there was an evaluation of the merits of the probable cause, primarily the issue being whether we could prove probable cause and what everybody's estimate of our possibility of success was.

Mr. BEN-VENISTE. Now was the RTC very active in the analysis of the settlement possibilities?

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. Whose decision was it to settle the case?

Mr. HUBBELL. The RTC's.

Mr. BEN-VENISTE. Did they base their decision on this decision tree and the probabilities involved—

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. —to the best of your knowledge?

Mr. HUBBELL. To the best of my knowledge. I know that I was semi-critical of the decision tree analysis, but it turned out that the RTC used it themselves and that, therefore, they liked the process and we went through it.

Mr. BEN-VENISTE. You were fully prepared to go forward with the trial of the case if that was the decision of your client?

Mr. HUBBELL. We were prepared on several occasions. It was set and then reset, and we were prepared to go to trial.

Mr. BEN-VENISTE. Now have you heard from any quarter that the settlement which was reached in that case was in any way insufficient or improper?

Mr. HUBBELL. No. In fact, the opposite, when we settled.

Mr. BEN-VENISTE. So the client, the RTC, who made the decision to settle, was very happy with the settlement amount, which was over \$1 million?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. So from a standpoint of whether there was sufficient or insufficient disclosure to the RTC with respect to all the matters that the Rose Firm represented Madison on back 4 or 5 years earlier, the conclusion of the case demonstrated a result that was in all ways satisfactory to the client?

Mr. HUBBELL. Yes. And may I add something? You all do what you want to, but everybody seems to be focusing on the communication between me and Ms. Breslaw. Madison Guaranty was at that time still being operated by most of the people who were there in 1985 and 1986. They were aware of who Seth Ward was. There was litigation still pending involving Seth and the RTC, but I think more importantly, the actual people who were there working at Madison were now employees of the FDIC. Rightfully or wrongfully, I assumed they remembered better than I the transactions involving Castle Grande and the IDC.

Mr. BEN-VENISTE. Now from a substantive standpoint, from a dollar amount, was the Madison representation a significant representation for the Rose Law Firm in 1985 and 1986?

Mr. HUBBELL. Not in 1985 or 1986, no, it was not.

Mr. BEN-VENISTE. From the standpoint of subject matter, was there anything that you now know about the representation of the firm, the closing of the IDC loan, the performance of various research and other advisory functions in connection with the preferred stock offering, the broker-dealer proposal, the regulatory matters involving the wet/dry issue and the sewer issue, do any of those matters, now that you look back at them in hindsight, provide grounds that would cause you, if you were to reevaluate it, to consider that you had a substantive conflict of interest in going forward in representing the bank's interest against its former auditors?

Mr. HUBBELL. Not in the Frost litigation, no.

Mr. BEN-VENISTE. Let me go to the preparation of the documents. You have indicated here this morning that it is your belief that Mr. Ward was capable of writing documents for the purchase and sale of property. Were you aware that he had done so?

Mr. HUBBELL. With regard to this?

Mr. BEN-VENISTE. With regard to anything in the 1980's.

Mr. HUBBELL. I'm sure I was. Specifics don't come to mind, but I'm sure I was. He had been a broker for a while.

Mr. BEN-VENISTE. In connection with the investigation that was completed by Pillsbury Madison & Sutro into the representation of Madison Guaranty by the Rose Law Firm, and I call your attention to the report that's dated December 28, 1995, at page 76, it states that:

McDougal and Ward seem to have resorted to self-help rather than advice of counsel. Certainly the series of loans that they entered into in the spring of 1986 (\$400,000 from Madison Guaranty to Ward; \$300,000 from Ward to Madison Financial; and approximately \$70,000 running in both directions) reflect a fairly unusual approach to documenting Ward's entitlement to commissions.

They go on to talk about this in the context of the meaning of these contracts. Is it fair to say that it is consistent with your experience and recollection that Mr. Ward would, from time to time, draft his own documents in connection with various contract matters?

Mr. HUBBELL. Yes, or they were drafted at Madison.

Mr. BEN-VENISTE. Let me ask you this. In connection with the option agreement, which was dated May 1, 1986, that's a two-page document, had you had occasion to review it?

Mr. HUBBELL. I looked at it last night.

Mr. BEN-VENISTE. According to Mrs. Clinton's billing records, her time sheets, it appears that on May 1st she spent 2 hours involved in conference with Mr. Ward, both in person and by telephone, and in drafting the document dated May 1 or some version of it.

Let me ask you, on the basis of your experience and familiarity with Mrs. Clinton's areas of specialty in the law, is it likely in your view that Mrs. Clinton drafted that document from scratch in 2 hours?

Mr. HUBBELL. I do not know, but my best guess is that there was a form within the firm, a form file that was pulled out and was used by Mrs. Clinton.

Mr. BEN-VENISTE. Do you have any reason to question whether Mr. Ward brought to Mrs. Clinton on that day some version of a document or outline of a document from which to work?

Mr. HUBBELL. There's no question that the deal was brought within 2 hours. Some kind of deal was brought, and it was memorialized. It could have been already written out, or it could have been in some form in a firm form file that was used.

Mr. BEN-VENISTE. Now having in mind that hindsight is always 20/20, the question of the firm's representation of Madison Guaranty and Madison Financial back in 1985 and 1986 as well as, in your view, Mr. Ward in connection with these matters, would pose, I think, to most lawyers a question of a conflict of interest. Normally, if people get a divorce, they try to get lawyers, one for each side. If they have a contract negotiation, usually one would get a lawyer, one for each side in the transaction. In my experience in the real world, sometimes clients who are well acquainted with one another will ask a lawyer to perform a service for both clients.

I would like you to give us your understanding, both in general terms and specifically, with respect to Ward and Madison, how things worked in Little Rock back in the mid-1980's.

Mr. HUBBELL. I would say in general terms, in the early- to mid-1980's, it was common practice for the lawyer, unless it was a real contested matter, to document a transaction between both the borrower and the lender and, usually, it was the lender's lawyer who did it. It was just common practice. We did a lot of work for another institution, not a savings and loan, and it was not uncommon for us to document the entire transaction for both parties.

Mr. BEN-VENISTE. Let me turn to another subject matter, and that is the subject matter of the billing records which have recently been turned over to this Committee on January 5, 1996. Have you had an occasion to review those records?

Mr. HUBBELL. I reviewed those records just recently.

Mr. BEN-VENISTE. Do you recall having seen them previously?

Mr. HUBBELL. Yes, I saw them in 1992.

Mr. BEN-VENISTE. Would you tell us in your own words what you recall and the circumstances about having seen those records at that time?

Mr. HUBBELL. I recall in 1992 that the issue regarding our representation of Madison and specifically our work before the Arkansas Securities Department was of interest to Mr. Gerth of The New York Times, and that our firm was being questioned by people within the campaign about Mrs. Clinton's work in that regard. We did some work in trying to organize and pull up the files. In connection with that, bills were pulled and reviewed by myself and Mr. Foster and Mr. Massey, I believe.

Mr. BEN-VENISTE. What do you recall about the review of those bills at that time?

Mr. HUBBELL. I recall only what I did, and that was to look for contacts with the Arkansas Securities Department and to get a general view of what work Mrs. Clinton may have done so that the campaign was not in a position of saying something that was inaccurate.

Mr. BEN-VENISTE. What time of the year in 1992 do you recall having reviewed the bills?

Mr. HUBBELL. I guess we call it the winter now. Sometimes it's the spring, but now it's the winter, February and March, certainly if this weather is any indication.

Mr. BEN-VENISTE. So it was early in 1992?

Mr. HUBBELL. Early in 1992.

Mr. BEN-VENISTE. What do you recall about where those billing records went after you reviewed them?

Mr. HUBBELL. They were at the firm when I reviewed them.

Mr. BEN-VENISTE. They were at the Rose Firm?

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. Now did you review them together with Mr. Foster?

Mr. HUBBELL. I really couldn't tell you. I believe at least that I reviewed them and gave them to Mr. Foster.

Mr. BEN-VENISTE. So, to the best of your knowledge, after the review by you and Mr. Foster, Mr. Foster had possession of them at least in early 1992?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Did you see them again after that review?

Mr. HUBBELL. I don't believe so.

Mr. BEN-VENISTE. Were those the records upon which you had a conversation with Susan Thomases?

Mr. HUBBELL. More than likely.

Mr. BEN-VENISTE. What was the reason for your conversation with Susan Thomases?

Mr. HUBBELL. The campaign was continuing to get inquiries. They were wanting to be clear on—if Mrs. Clinton had not done certain work, they wanted to be able to say that because it was not only the press at that point, but other people running against the President who were saying things about it, and they wanted to know what type of work she had done and what could be said.

Mr. BEN-VENISTE. Do those records reflect that Mrs. Clinton did a substantial amount of work for Madison Guaranty?

Mr. HUBBELL. Not in my opinion.

Mr. BEN-VENISTE. Now after you reviewed the records and had your conversation with Ms. Thomases, do you recall whether you had the records in front of you when you had the conversation with Mr. Foster?

Mr. HUBBELL. I don't recall.

Mr. BEN-VENISTE. But it would be fair to say that you had reviewed them within that general timeframe of your conversation with him?

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. And the last you recall of seeing those records in 1992 was when Mr. Foster took possession of them?

Mr. HUBBELL. Either Vince and I looked at them together—there's one thing on the records that gives me some indication that I did something and then gave them to Vince.

Mr. BEN-VENISTE. What is that? Could we have a set of the records provided to Mr. Hubbell, please.

Mr. HUBBELL. Can I make one caveat while we're getting this?

Mr. BEN-VENISTE. Surely.

Mr. HUBBELL. What I have seen are Xerox copies. I don't know precisely in what format the originals are. You know what I'm saying? I have read in the paper that somebody has got red ink on one of them, but I have only seen the copies—

Mr. BEN-VENISTE. Can I have a copy sent down? Let's have the Committee's copy, which is a color photocopy, sent down.

Mr. Hubbell, let me put in front of you what we have received, on the size of paper we have received it, which is a color copy of the billing records received from Mr. Kendall.

Mr. HUBBELL. OK.

Mr. BEN-VENISTE. Now, you said that there was something on the records that you wished to call our attention to?

Mr. HUBBELL. I'm referring to DKSJ 028935.

Mr. BEN-VENISTE. DKSJ 028935. OK.

Mr. HUBBELL. I am referring to what appears to be on what we call a yellow Post-Em or whatever, but there's an asterisk there. I recognize that as my asterisk or my handwriting, as bad as it is.

Mr. BEN-VENISTE. That appears to be a photocopy of what was a yellow sticky or a Post-it with an asterisk toward the bottom of the page?

Mr. HUBBELL. Right.

Mr. BEN-VENISTE. Do you recall why you put that asterisk there?

Mr. HUBBELL. Because, as you can see, there's some real shaky underlining right beside it. That's mine as well. It says "telephone conference with B. Bassett." If you recall, the issue then, way back when, was did Mrs. Clinton ever have any contact with the Arkansas Securities Department. When we went back to the bills, that was the only, I believe, indication on the bills of a direct contact with the Arkansas Securities Department so I underlined that. I probably gave that to Vince.

Mr. BEN-VENISTE. Now there's more writing on the same page, if you will stay with that, also in red. It looks like felt tip pen.

Mr. HUBBELL. Right.

Mr. BEN-VENISTE. It says "HRC—this suggests 1st matter."

Mr. HUBBELL. Right.

Mr. BEN-VENISTE. Do you recognize that handwriting?

Mr. HUBBELL. Yes, I do.

Mr. BEN-VENISTE. Whose is that?

Mr. HUBBELL. Vincent Foster's.

Mr. BEN-VENISTE. So both of you were marking up these billing records for purposes of your review and analysis in red ink?

Mr. HUBBELL. Right.

Mr. BEN-VENISTE. Do you recall having seen Mr. Foster's handwriting on the documents back in 1992?

Mr. HUBBELL. I don't.

Mr. BEN-VENISTE. Do you recall having discussed the same issues about the sequence of events and the nature of the representation back in 1992?

Mr. HUBBELL. With Mr. Foster?

Mr. BEN-VENISTE. With Mr. Foster.

Mr. HUBBELL. Yes, I do.

Mr. BEN-VENISTE. And to the best of your ability to provide an informed opinion, if you did not see Mr. Foster's handwriting back in 1992, do you have a belief as to whether the notations made by Mr. Foster were made in 1992?

Mr. HUBBELL. I have an opinion, but it's just my belief. We were both working on it, and this is what he did to ultimately give it to somebody to indicate what was going on, he highlighted what the records showed.

Mr. BEN-VENISTE. Do you know who he gave it to?

Mr. HUBBELL. No.

Mr. BEN-VENISTE. So your belief is that these markings were made in 1992?

Mr. HUBBELL. That's my belief.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. And to whom did he give it, someone in the campaign?

Mr. HUBBELL. Mr. Sarbanes, I really don't know. I would hate to guess. It looks like it's directed to Mrs. Clinton, but I do not know. It was probably given to somebody in the campaign.

Senator SARBANES. Probably somebody in the campaign?

Mr. HUBBELL. Probably, but I don't know.

Mr. BEN-VENISTE. Mr. Chairman, our time is up.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you.

Mr. Hubbell, did you have the records printed out from the Rose Law Firm on February 12, 1992, or thereabouts?

Mr. HUBBELL. Thereabouts. Either myself or Vince Foster requested they be printed out.

Senator SHELBY. Who would have had the capability to do this, in other words, the printouts?

Mr. HUBBELL. As far as this cover printout, our accounting department.

Senator SHELBY. Now do you have the copy of the records that were produced from the White House that they found down there?

Mr. HUBBELL. Yes, I do.

Senator SHELBY. You have looked at those records, and you're looking at them right now?

Mr. HUBBELL. Yes.

Senator SHELBY. You identified Vince Foster's handwriting and notes; is that correct?

Mr. HUBBELL. That's correct.

Senator SHELBY. Are his notes written in with a red script?

Mr. HUBBELL. On the copy that I received here, yes, they were.

Senator SHELBY. And you do not recall seeing the red writing, the red ink on the notes or on the records when you first looked at them in 1992, do you?

Mr. HUBBELL. No, I do not.

Senator SHELBY. So you don't know, of your own knowledge, when Mr. Foster wrote what he did on these notes?

Mr. HUBBELL. No, I do not.

Senator SHELBY. You have looked through the records?

Mr. HUBBELL. Yes, I have.

Senator SHELBY. Is there more than one occasion where Mr. Foster made some notes regarding Hillary Rodham Clinton's billing?

Mr. HUBBELL. Yes. There's some I've identified as my handwriting, or bad scribbling.

Senator SHELBY. Did you give the records there to Mr. Foster, or were you all working off of a different copy or what?

Mr. HUBBELL. I think I testified no, it was clear that we were working off the same copy.

Senator SHELBY. Working off the same copy?

Mr. HUBBELL. I don't remember whether we were doing it together, but my best belief is that I was highlighting certain things and then giving them to Mr. Foster.

Senator SHELBY. Were these records ever turned over to Hillary Rodham Clinton by Mr. Foster?

Mr. HUBBELL. I do not know.

Senator SHELBY. If you will turn to DKS 028935, would you look at that?

Mr. HUBBELL. Yes.

Senator SHELBY. At the top of the page, does it say "HRC—this suggests 1st matter"?

Mr. HUBBELL. "This suggests 1st matter."

Senator SHELBY. Is that the handwriting of Mr. Foster?

Mr. HUBBELL. Yes, it is.

Senator SHELBY. Do you know if he turned these copies of these records over to or discussed them with Mrs. Clinton?

Mr. HUBBELL. I do not.

Senator SHELBY. But it's obvious to you as a lawyer that he was going back over these records and checking billing items that Mrs. Clinton billed out for doing various amounts of work?

Mr. HUBBELL. That is correct. That was my understanding, and that's what I know he did.

Senator SHELBY. What happened to these records after you and Mr. Foster were finished working off the same sheet or the same records? What happened to those records?

Mr. HUBBELL. I don't know, Senator.

Senator SHELBY. Let's go back to February 1992. You were both working and making notes on the records that are before you; is that right?

Mr. HUBBELL. Right, that's correct.

Senator SHELBY. You were a partner and working in the Rose Law Firm with Mr. Foster at that time?

Mr. HUBBELL. That's correct.

Senator SHELBY. Did they walk out of the office there or what happened to them?

Mr. HUBBELL. I don't know.

Senator SHELBY. Did you ever inquire as to where they were after February 1992? Did you ever talk to Mr. Foster about—

Mr. HUBBELL. No, I never talked to Mr. Foster. Recently I have inquired as to where they were, obviously everybody has been inquiring about where they were, but until just recently, no.

Senator SHELBY. Did you take those records out of the Rose Law Firm?

Mr. HUBBELL. No.

Senator SHELBY. You did not?

Mr. HUBBELL. No.

Senator SHELBY. Do you know if Mr. Foster did?

Mr. HUBBELL. I do not know.

Senator SHELBY. Did you talk to Mr. Kendall about this, or did Mr. Foster, about these records?

Mr. HUBBELL. These records, no.

Senator SHELBY. Do you know if Mr. Foster talked to him about the billing records?

Mr. HUBBELL. I don't believe Mr. Foster would have talked to Mr. Kendall because Mr. Foster had died before Mr. Kendall was hired.

Senator SHELBY. OK. Who kept in custody these records from February 1992 until they were discovered? Can we just go through the chain here?

Mr. HUBBELL. I do not know.

Senator SHELBY. You have no idea?

Mr. HUBBELL. I believe they were at the firm and when they left the firm, I don't know.

Senator SHELBY. How did they get to the White House?

Mr. HUBBELL. I don't know, Senator.

Senator SHELBY. You have no idea?

Mr. HUBBELL. No, I do not.

Senator SHELBY. Do you know if these records were part of the records that Mr. Foster had in his office at the White House when he was still alive?

Mr. HUBBELL. No, I do not.

Senator SHELBY. Could they have been?

Mr. HUBBELL. Yes, they could have been.

Senator SHELBY. Who did you talk to, Mr. Hubbell, about these billing records other than Mr. Foster?

Mr. HUBBELL. I know that I talked about these with people in the campaign.

Senator SHELBY. Who would that be? Would that be President Clinton, Governor Clinton then?

Mr. HUBBELL. No, no, no.

Senator SHELBY. Would it be Mrs. Clinton?

Mr. HUBBELL. I have tried to——

Senator SHELBY. Let's go back in time——

Mr. HUBBELL. I was trying to answer, Senator.

Senator SHELBY. Go ahead.

Mr. HUBBELL. I really was. I've been trying for a long time to think about who I talked to, whether I talked to Mrs. Clinton about Madison billing or not. I don't know that I did. I don't have any memory of doing it, but it seems unlikely that I wouldn't have, although Vince may have been the one who talked to Hillary about it. I did talk to, I am confident, Loretta Lynch and, according to the notes, I had some conversation with Susan Thomases.

Senator SHELBY. You talked with Susan Thomases about it. You have seen her notes from the conversation, the telephone conversation you had with her in February of 1992?

Mr. HUBBELL. I have not seen her notes. I've seen articles about her notes.

Senator SHELBY. Did you discuss these bills, these bills you have before you, with anyone at the White House from 1993 on?

Mr. HUBBELL. Talk about the bills with the White House?

Senator SHELBY. Anybody at the White House. Not with Mr. Nussbaum?

Mr. HUBBELL. No, I didn't talk with Mr. Nussbaum. Carolyn Huber worked at the White House, but I would have talked to her about them when she was at the Rose Firm, not when she went to the White House.

Senator SHELBY. Did you ever talk to Mr. Foster about them after he went to the White House?

Mr. HUBBELL. No.

Senator SHELBY. Who did you send this fax to, that Counsel asked you about, when you were over at the Justice Department?

Mr. HUBBELL. I believe, Senator, I said I don't remember sending the fax.

Senator SHELBY. But it came from your phone number or your area over in the Justice Department, did it not?

Mr. HUBBELL. That's what it indicates, yes.

Senator SHELBY. Do you dispute that?

Mr. HUBBELL. No, I don't.

Senator SHELBY. You're just saying you don't recall personally sending it, but you don't deny sending it, do you?

Mr. HUBBELL. No, not one way or the other.

Senator SHELBY. Now who did you send it to? Did you send it to Mrs. Clinton, Mr. Lindsey, Mr. Nussbaum, Mr. Foster? Who did you send it to?

Mr. HUBBELL. It wouldn't have been Mr. Foster, Senator, as you know. He was no longer with us.

Senator SHELBY. This was subsequent to that.

Mr. HUBBELL. Most of my communication with the White House was through the White House Counsel's Office.

Senator SHELBY. Was that personally Mr. Nussbaum?

Mr. HUBBELL. I talked to Mr. Nussbaum, I talked to the new Deputy, I don't know exactly when he went on board, and I talked to Mr. Kennedy on a daily basis.

Senator SHELBY. Of your own knowledge, was the last person who had the billing records before you Mr. Foster?

Mr. HUBBELL. Yes.

Senator SHELBY. Did you ever have any conversations with anyone, Mr. Hubbell, about whether any billing sheets or records existed after your testimony on December 1st?

Mr. HUBBELL. Yes.

Senator SHELBY. If so, with whom?

Mr. HUBBELL. With the Grand Jury in Little Rock, Arkansas, Mr. Hick Ewing, and my counsel.

Senator SHELBY. When you first heard that the billing records before you were found or discovered at the White House, what was your reaction?

Mr. HUBBELL. That Carolyn found them?

Senator SHELBY. Right.

Mr. HUBBELL. I smiled.

Senator SHELBY. Like the world?

Mr. HUBBELL. No. I know Ms. Huber, and it just didn't surprise me that all of a sudden she discovered them.

Senator SHELBY. Discovered them on the table?

Mr. HUBBELL. No, discovered them in her office.

Senator SHELBY. Discovered them in her office. OK. But you had no idea where they were for the last year or two?

Mr. HUBBELL. No, no, I did not.

Senator SHELBY. Thank you.

Senator SARBANES. Senator Dodd.

Mr. BEN-VENISTE. What is it that you knew about Ms. Huber that caused you to smile and to make that observation?

Mr. HUBBELL. First of all, I felt sorry for her, but just that all of a sudden, oh, you're looking for the billing records, here they are. It just didn't surprise me that something like that happened. I read about it and I just smiled.

Mr. BEN-VENISTE. Is it correct, Mr. Hubbell, that you did not do any work on the IDC transactions?

Mr. HUBBELL. I did not.

Mr. BEN-VENISTE. With respect to the regulatory matters involving IDC, that is the wet/dry matter or the sewer matter, did you do any work?

Mr. HUBBELL. I didn't do any work, no.

Mr. BEN-VENISTE. Knowing Mr. Ward as you do, Mr. Hubbell, do you think he would have had a reluctance in picking up the phone

to inquire about the status of the various regulatory projects which were being handled by Rose?

Mr. HUBBELL. I don't think Mr. Ward would have any involvement in the securities matter at all.

Mr. BEN-VENISTE. No. I'm talking about the latter two matters.

Mr. HUBBELL. No.

Mr. BEN-VENISTE. There is a series of telephone conversations between Mr. Ward and Mrs. Clinton, which correspond to the work being done by Mr. Donovan and overseen by Mrs. Clinton relating to the wet/dry issue and the sewer issue. My question is directed based on your knowledge of Mr. Ward and his predilections. Would you find it unusual that he would pick up the phone and initiate contact with Mrs. Clinton about the status of those matters?

Mr. HUBBELL. I would find it not unusual at all that he would pick up the phone and, like a lot of clients, would want to know why it hadn't been done yesterday.

Mr. BEN-VENISTE. In fact, I take it from that answer, it would surprise you if he hadn't done so?

Mr. HUBBELL. If he wanted something, and it was important, then I would expect him to call every day until it was done.

Mr. BEN-VENISTE. To come back to the point I was making earlier about Mr. Alston Jennings' testimony, which was read to you from page 123 of the transcript of Mr. Jennings' deposition. And, of course, you haven't seen the transcript of that deposition, have you?

Mr. HUBBELL. No, I have not.

Mr. BEN-VENISTE. Indeed, it was just taken yesterday. The question that was put to you from that deposition was:

Question: So, in your discussions with Mr. Ward, it was your understanding that neither he nor Mr. McDougal obtained any assistance from lawyers in preparing these letter agreements?

And Mr. Jennings said:

Answer: That was my very clear understanding, that the preparation of the agreements, the language of the agreements was, as far as Mr. Ward knew, not the product of any lawyer.

Then, continuing with Mr. Jennings' testimony:

Question: And Mr. Ward was familiar with the preparation of all three, so if lawyers were involved, he would have been aware of that?

Answer: Absolutely.

Question: And I think this is clear, but Mr. Ward never indicated to you that Mr. Hubbell assisted him in the preparation of those letter agreements?

Answer: He indicated to me that Mr. Hubbell's secretary typed, I think, just one of the agreements.

Question: And do you recall which one that was?

Answer: I think it was the third one or the one that included the Holman Acres.

He was questioned further at line 17:

Question: And to be as clear as we can, recognizing that this was many years ago, all three agreements were prepared over the space of a few days around September 24th?

Answer: That's correct.

Question: That's your best understanding?

Answer: Yes.

Question: And Mr. Ward was quite clear on that point?

Answer: Yes.

This is Mr. Jennings being questioned about his conversations with his former client, Mr. Ward. What I wanted to make clear, in answering that question and being referred to that transcript, was that the subject of that questioning was the early agreements for the purchase of the property, and the other agreements between Mr. Ward and Madison Bank at or around September 24, 1985, as compared with the option agreement, which was dated May 1986. That was not the subject of this questioning.

I think that would exhaust the questioning on this line for the moment, Mr. Chairman. We would cede that time back.

The CHAIRMAN. Thank you. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman. Mr. Hubbell.

Mr. HUBBELL. Senator.

Senator MACK. I am going to ask that we put up on the Elmo a letter dated November 22, 1993, from Mr. Kendall back to Mr. Jones at the Rose Law Firm, and I do this for the purpose of identifying some files because that's the area of inquiry that I want to pursue. The three files, as I understand it, that are listed on here are first, the "Madison Guaranty Limited Partnership Application/Brokerage Activities," second would be the "Madison Guaranty Net Worth Preferred Stock Offering," and third, "Madison Guaranty Preferred Stock Offering." It is my understanding that you gave those files to Williams & Connolly; is that correct?

Mr. HUBBELL. That is correct.

Senator MACK. When did you give them to Williams & Connolly?

Mr. HUBBELL. It was when I met Mr. Kendall at his office in mid-November. I don't have the exact date in front of me.

Senator MACK. So it would have been sometime relatively near this November 22nd—

Mr. HUBBELL. Very close, yes.

Senator MACK. What prompted you to give those files to Mr. Kendall?

Mr. HUBBELL. I gave all the files I had in my possession that related to the Clintons to Mr. Kendall in the month of November.

Senator MACK. I didn't hear that last part, I'm sorry.

Mr. HUBBELL. In the month of November.

Senator MACK. You say you gave him all of the files. Are you implying there were more files than these three that were identified?

Mr. HUBBELL. That belonged to the Clintons, yes, but not that related necessarily to Madison. I had a great deal of files in my basement, as I have told this Committee, and all of those were delivered to Mr. Kendall in November of 1993.

Senator MACK. So this letter only refers to three files?

Mr. HUBBELL. That's correct.

Senator MACK. Let me ask you this question. There was a whole series of files, then, that you kept in your basement?

Mr. HUBBELL. That's correct.

Senator MACK. Did you get all of those files at the same time?

Mr. HUBBELL. Within a short period of time in the month of January 1993.

Senator MACK. In the month of January 1993. Who did you get the files from?

Mr. HUBBELL. I got some of the files from Ms. Betsey Wright. I got some of the files from people within the firm who knew I was putting all the files together, including Mr. Foster.

Senator MACK. You received files from Mr. Foster?

Mr. HUBBELL. Yes.

Senator MACK. And that would have been in January 1993?

Mr. HUBBELL. Yes. The three files that are referenced in this letter, I got from Vince. Now, I don't remember whether it was Vince, Vince's secretary, or some other staff employee at the firm who handed them to me, but I knew what they were, and they were given to me by Vince.

Senator MACK. And this was in January 1993?

Mr. HUBBELL. January 1993.

Senator MACK. What was going on in your life in January 1993?

Mr. HUBBELL. A lot. I was moving to Washington, I was leaving the law firm, I was going to join the Justice Department, and I was working for the transition team at that time doing lots of things.

Senator MACK. Just one question that comes to mind. In retrospect, does it strike you as unusual that an individual, who I guess—at that time were you aware that you were going to be the Associate Attorney General?

Mr. HUBBELL. No, I was not. I was not aware I was going to be Associate Attorney General. In fact, I didn't expect to be Associate Attorney General when I came to Washington.

Senator MACK. So these were given to you, then, because of your position on the transition team?

Mr. HUBBELL. I believe, especially as it pertains to the Betsey Wright files, I was doing that in connection with the transition. Those files had been at the campaign. I got them, along with other files, and was going to try to determine what we were going to do with the files of the campaign and the transition.

Senator MACK. I'm just curious as to why it was you. I mean, wasn't Mr. Lindsey deeply involved?

Mr. HUBBELL. Everybody was real busy, and I was an attorney and was working on this specific issue, along with other counsels to the transition, and I knew Ms. Wright and I made the request to Ms. Wright to deliver them to me.

Senator MACK. Again, there were a number of files that came to you from different sources that were in your possession in January 1993. Betsey Wright was one of the individuals that gave you some files?

Mr. HUBBELL. Right.

Senator MACK. Vince Foster gave you some files?

Mr. HUBBELL. Either directly or through one of his people.

Senator MACK. Who else provided files?

Mr. HUBBELL. Hillary's secretary, Ms. Huber, myself.

Senator MACK. The other thing that catches your attention in this letter is the reference that these files were of the late Vince Foster, and I think you said just a moment ago specifically these three files were given to you either by Vince Foster or someone working on his behalf?

Mr. HUBBELL. Right. I think Mr. Kendall, when he wrote this letter, was actually mistaken. They weren't part of Vince Foster's files, other than that he had them at the firm, and he gave them

to me. I think he was mistaken in the way he phrases this letter. I had the possession of those files from January 1993. I delivered them to Mr. Kendall.

Senator MACK. Where did Mr. Foster have these files? He wasn't the attorney of record?

Mr. HUBBELL. No. As I think we testified earlier, in 1992 there were specific issues raised about Mrs. Clinton's work before the Arkansas Securities Department, and these three files related to that.

Senator MACK. Were these original files, or were these copies?

Mr. HUBBELL. These were originals.

Senator MACK. I'm curious as to why you gave these files to the Clintons' attorney.

Mr. HUBBELL. I wanted to give the Clintons' attorney all the files that belonged to them or had any relation to them.

Senator MACK. Again, I'm not sure. There are some questions that come to mind. Why didn't these go directly back to Madison?

Mr. HUBBELL. These weren't Madison files. They were Rose Law Firm files.

Senator MACK. Excuse me?

Mr. HUBBELL. These were the Rose Law Firm files on these three issues.

Senator MACK. But you said these were not Madison files. They were Whitewater files?

Mr. HUBBELL. No, I didn't say Whitewater. If I did, I'm sorry. They were Madison files. They were Rose Law Firm files on work we did for Madison Guaranty back in 1985.

Senator MACK. I really meant to ask you the question why didn't you return them to the Rose Law Firm as opposed to the Clintons' attorney?

Mr. HUBBELL. Why didn't I return them? Because I was returning them to the Clintons' attorney because we kept them as part of the Clintons' files.

Senator MACK. Because you had kept them as part of the Clinton files does not make them the Clintons' files. Weren't these the Rose Law Firm's files?

Mr. HUBBELL. Yes, they were.

Senator MACK. So why did you turn them over to the Clintons' attorney?

Mr. HUBBELL. I did.

Senator MACK. I recognize that you did.

Mr. HUBBELL. If you think I made some conscious decision, I didn't. As soon as Mr. Kendall got them, he said he ought to send them back to the Rose Law Firm.

Senator MACK. But why did you give them to him?

Mr. HUBBELL. Why did I give them to him?

Senator MACK. Right.

Mr. HUBBELL. Because they related to the Clintons, and it was an issue that had been raised in the campaign.

Senator MACK. In your mind, the Madison files related to the Clintons. One of the things we've been hearing from the Clintons is that they had nothing to do with Madison. In fact, there was a comment about their activity being just peripheral. So what you're saying is in your mind, Madison equaled Clintons, therefore, return to Clintons' attorney?

Mr. HUBBELL. No, Senator, that's not what I'm saying. What I'm saying is in 1992, people tried to say that Mrs. Clinton had substantial involvement at the Arkansas Securities Department when she was a lawyer at the Rose Firm. These files were the files of the Rose Firm which showed that she did not, and that's why I kept them, and Mr. Foster kept them, and then we delivered them to the Clintons' attorney who delivered them back to the firm.

Senator MACK. So you're now saying you returned them to Mr. Kendall. Did you instruct him to return them to the Rose Firm?

Mr. HUBBELL. No, I did not. I did not instruct him one way or the other.

Senator MACK. The other area that I want to pursue, even though my time is limited here, frankly, I'm amazed that this—I originally thought there were only three files, but I guess it was because I hadn't been paying attention earlier. There's a whole host of files that you received from many different sources that you had in your basement since January 1993?

Mr. HUBBELL. I didn't have them in my basement. I had them in my possession. They ultimately ended up in my basement. I didn't have a basement until I moved to Washington.

Senator MACK. Fine. You had these files in your possession?

Mr. HUBBELL. That's correct.

Senator MACK. Which I think is the significant point.

Mr. HUBBELL. I think so, too.

Senator MACK. You have had these files since January 1993. When did you become the Associate Attorney General?

Mr. HUBBELL. In May.

Senator MACK. And you did not turn these files over to anyone until November?

Mr. HUBBELL. That's correct.

Senator MACK. There were some fairly significant concerns being raised about the Clintons, the White House. I believe you're aware of criminal referrals?

Mr. HUBBELL. I learned about the criminal referrals regarding some other individuals in, I believe, September, yes.

Senator MACK. The comment "other individuals" implies that there was no reference to the Clintons in those nine——

Mr. HUBBELL. Senator, I have never seen the criminal referrals. I don't know what's in them.

Senator MACK. The criminal referrals had to do with Madison?

Mr. HUBBELL. My understanding was they did have to do with Madison.

Senator MACK. You had files of Madison Guaranty?

Mr. HUBBELL. No.

Senator MACK. I thought you just testified——

Mr. HUBBELL. I had the Rose Law Firm's files on work we did for Madison.

Senator MACK. Excuse me. You had Rose Law Firm files of work on Madison that you retained until November——

Mr. HUBBELL. That's correct.

Senator MACK. —1993?

Mr. HUBBELL. Yes.

Senator MACK. Now, you were Associate Attorney General of the United States?

Mr. HUBBELL. Yes.

Senator MACK. And you then turned those files over to the Clintons' attorney?

Mr. HUBBELL. That's correct.

Senator MACK. You don't find any problem with that?

Mr. HUBBELL. Absolutely not.

Senator MACK. Well, I think that is an indicator of the difficulties that the White House and this Administration has gotten into. I yield back my time.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Mr. Chairman, may I ask one quick question and follow on with that?

The CHAIRMAN. Yes.

Senator BENNETT. When Mr. Massey was here, Mr. Hubbell, he told of an instance where Mr. Foster came to him and asked him for files. Mr. Massey did not comply with that request immediately, which caused Mr. Foster to be upset and to ask him why the delay, and Mr. Massey said because I'm copying them. He insisted on making copies before turning the files over, and in the course of this examination made it clear that if he had known files that he considered to be the property of the Rose Law Firm were, in fact, being taken out of the firm, he would have raised a protest.

Mr. HUBBELL. OK.

Senator BENNETT. Now are these the files that Mr. Massey insisted on making copies of?

Mr. HUBBELL. I do not know. I do believe when I took the files and left the firm, Mr. Massey had copies, but I don't know for sure what he copied. I believe he had copies when I left.

Senator BENNETT. These are the files—

Mr. HUBBELL. These are some of the files. I believe Mr. Massey made copies of all of the Madison files. That was what he told Mr. Foster he was going to do.

Senator BENNETT. OK. That's the point I wanted to discover, Mr. Chairman. If Mr. Massey's sense of legal ethics said to him, these files should not leave the law firm, at least not until I have made copies of them, but there was a sense of pressure on the part of Vince Foster that he wanted them out to the point where he was upset with Mr. Massey for delaying the supplying of the files, I find that somewhat significant.

Mr. HUBBELL. I have never read that Mr. Massey said that Mr. Foster intended to take the files. That was back in 1992 when we were both employed there.

The CHAIRMAN. I don't understand the significance of that last comment.

Mr. HUBBELL. Well, I thought the Senator was saying—maybe I'm wrong.

The CHAIRMAN. I still don't understand the significance of that comment.

Mr. HUBBELL. I thought the Senator was saying—and maybe I'm wrong—that Mr. Foster had told Mr. Massey that he was going to take the files out of the firm. I don't believe that's the truth.

Senator BENNETT. No, Mr. Foster did not tell Mr. Massey. Mr. Massey told us he was upset to discover they had been taken out

of the firm. His only conversation with Mr. Foster was when Mr. Foster became upset with Mr. Massey over taking the time to make copies before delivering the files to them. It may well be if we hadn't had those copies, we might never have known about the records. I don't know.

I wanted to know if these were the same files that Mr. Massey insisted on making copies of—

Mr. HUBBELL. Senator Bennett, I disagree with that statement. I won't say anything.

Senator BENNETT. OK. I am trying to find out. So you are saying these are not the files?

Mr. HUBBELL. No. I am saying you were making the implication that if Mr. Massey had not made copies, you wouldn't have these files. In fact, you have these files. Nothing was ever done with them. The originals were kept, secured, and are still in existence.

Senator BENNETT. I think that's fair, I accept that.

The CHAIRMAN. Let me—before I turn to Senator Sarbanes—make an observation. Mr. Massey, I believe, was quite upset when he ascertained that indeed the files had left the office; that is indisputable.

Mr. HUBBELL. That's fine.

The CHAIRMAN. Now let me go one step further. Had indeed the files been turned over, without copies being made, there is no reason to believe that the law firm would have had any files. The files remained at the law firm only because Mr. Massey made copies, and that was the Senator's point.

Senator Sarbanes.

Senator SARBANES. The way I understood the Senator's point, I thought he and Mr. Hubbell had straightened it out between them.

The CHAIRMAN. I think the Senator had agreed to drop the matter, but I followed very carefully what his point was and, indeed, I wanted to make my own observation. That is my observation. Now let's put the full 10 minutes on the Senator's clock so that he can then proceed. Senator.

Senator SARBANES. As I understand it, the files that became available with respect to this matter were the files that came from Mr. Hubbell's basement. So the statement that it is only because Mr. Massey made copies that we got these files is not accurate because the files we got were, in fact, the files that were in Mr. Hubbell's basement which were then turned over to Mr. Kendall. We have this subsequent trail with respect to these files. Is that the point you were trying to make?

Mr. HUBBELL. My point is that these three files that deal with the securities issue were always, as far as I know, always intact and have never been missing or anything like that. They have always been in good shape and intact. That's the point I was trying to make.

Senator SARBANES. Now, the reason these files were, as it were, pulled or focused upon, was that queries were being raised, as I gather, during the course of the campaign. And these files were relevant to try to answer those queries?

Mr. HUBBELL. That's correct.

Senator SARBANES. That's why you and Mr. Foster were seeking these files and were doing a review of the work that had been done,

because questions were being raised about the amount and the nature of the work that had been done in the firm, and I take it primarily by Mrs. Clinton?

Mr. HUBBELL. On the securities matter, yes, Senator.

Senator SARBANES. These files were part of a lot of other files that had nothing to do with any of the issues we are looking at; is that correct? I mean, in terms of what—

Mr. HUBBELL. What I turned over to Mr. Kendall?

Senator SARBANES. Yes.

Mr. HUBBELL. Yes, I would say 99.9 percent had nothing to do with Madison Guaranty as far as I know. I am exaggerating, I am sorry. Certainly 99.9 percent is not a right number.

Senator SARBANES. But, in any event, there were a lot of files; most of which had nothing to do with any of the matters we are looking at?

Mr. HUBBELL. That's correct.

Senator SARBANES. Those files and these files were turned over to Mr. Kendall; is that correct?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Mr. Hubbell, with respect to—

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. May I raise one other question here before you go on, Richard? Our colleague from Utah has left and I don't have the transcripts in front of me, but it just seemed to me, and maybe my recollection isn't clear on this, that when Mr. Massey was testifying and the questions were raised as to why it was that it appeared Mr. Foster seemed impatient, I am not sure it was clear from Mr. Massey's testimony—someone can correct me here—as to why he seemed impatient, whether it was because of the press inquiries that were coming in at that time pretty heavily. I don't think Mr. Massey categorically said this was because Mr. Foster wanted to make copies of the files.

Mr. BEN-VENISTE. Let me see if I can refresh the witness' recollection with my recollection of Mr. Massey's testimony.

What he indicated in his testimony, I believe, was that Mr. Foster had come to him at the point where there had been the press inquiries. Everybody was scrambling around trying to pull information together. Mr. Foster had asked Mr. Massey to provide him with the material that Mr. Massey had, his files, relating to the Rose representation on the securities matter. That occurred on the afternoon of one day.

The next morning, Mr. Foster again asked Mr. Massey whether he had the materials for him. Mr. Massey stated that he hadn't gotten around to making the copies yet. Mr. Massey testified that he thought Mr. Foster was very abrupt with him, by reason of the fact that he had not yet gotten the material in shape sufficient to turn it over to Mr. Foster.

Mr. Massey indicated that he was in the process of photocopying them, he was doing it himself because he lacked other assistance at the firm, he had a lot of other matters to attend to, and he provided the photocopies to Mr. Foster.

Senator BENNETT. Now, my recollection is also the case that Mr. Massey's testimony was that the documents which were provided

to Mr. Foster, which made their way to you in late 1992 or 1993 or thereabouts, were copies.

The record is very clear, number one, that the Committee has received all of that material, two, that Mr. Massey has been questioned extensively about it, three, that the material reflects all the work Mr. Massey did in connection with the securities representation for Madison and, four, that Mr. Massey's testimony is that there was a full set of all that material, indeed the originals of that material, in his office.

Indeed, your observation is correct in connection with the fact that Mr. Kendall perhaps unartfully described where this material came from. Mr. Foster had it at one point, but you provided it to Mr. Kendall and Mr. Kendall sent a copy or sent the copy that you had to the Rose Law Firm under the belief that this should be sent back to the Rose Law Firm.

In any event, the material was received by us from Mr. Kendall pursuant to our request for various documents. Over 50,000 pages of documents had been provided by that point, according to my recollection.

In answer to Senator Dodd's question, would it surprise you that Mr. Foster, having made a request on day one for the material from Mr. Massey and being told by Mr. Massey on day two that it was not yet available, might have been impatient?

Mr. HUBBELL. It doesn't surprise me.

Mr. BEN-VENISTE. And, indeed, in terms of the ambience surrounding the request to collect all of these materials in order to answer the press inquiries that were being made at that time by, I take it, Mr. Gerth from The New York Times, would you agree that this was a hurry-up drill?

Mr. HUBBELL. All of them were hurry-up drills.

Mr. BEN-VENISTE. I have some other questions that were raised earlier, but we concede.

The CHAIRMAN. How much time is remaining? Three minutes. You have 3 minutes.

Mr. BEN-VENISTE. That will be fine.

The CHAIRMAN. We can start off with you with 3 minutes when we come back. We have been informed that there are as many as eight votes. This is going to be a very late session, so let me suggest to the witness and those who want to make accommodations for their schedule, et cetera, that we reconvene at 2:00 p.m. There is no way, even if you have just 10-minute votes, that we can continue any sooner than that. This way the Members of the Committee can attempt to do what we have to, eat lunch, et cetera.

Mr. Hubbell, this will give you an opportunity to have a break. For others who are interested, this will provide them an opportunity to do what they have to do. We will reconvene at 2 p.m. and, Mr. Ben-Veniste, you will start off.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. We stand in recess.

[Whereupon, at 11:54 a.m., the hearing was recessed, to be reconvened at 2:00 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. When we last left, Little Red Riding Hood was headed out into the woods.

Mr. BEN-VENISTE. Was that my cue to come in?

The CHAIRMAN. We will now proceed with Mr. Ben-Veniste. I don't want him to get mixed up with Little Red Riding Hood.

Mr. Ben-Veniste, you have 3 minutes. I'm going to ask that we put 5 minutes on and we'll resume.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. I want to thank you for the extra 2 minutes. No one could confuse you with the Big Bad Wolf under those circumstances. Thank you, Mr. Chairman.

Mr. Hubbell, let me start out where we left off earlier. It is correct, on the basis of my recollection, as Senator Bennett observed, that Mr. Massey's testimony was that he felt it was inappropriate for his files relating to the securities matter to be disseminated among people outside the firm. I want you to understand that is Mr. Massey's testimony, whether or not you agree with that proposition.

I want to go further on the issue relating to the question of the preservation of records and the issue of whether there was any suggestion connected to Mr. Foster's request of Mr. Massey that Mr. Massey provide him with a copy of the materials that Mr. Massey had generated in connection with his representation of Madison Guaranty Savings & Loan on the securities matter.

Now to go back in time, the request that Mr. Foster made with which you are familiar was a fact-gathering, hurry-up drill to respond to a press inquiry in early 1992 relating to the campaign and relating to work done in connection with Madison Guaranty?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. The issue being whether Mr. Foster in some way was involved in some kind of an operation whereby records of the Rose Firm would be destroyed as opposed to reviewed for purposes of responding to the press inquiry, I will read from Mr. Massey's testimony before this Committee at page 94 where I am questioning him. Mr. Massey is asked:

Question: You are not suggesting here, are you, because we're dancing around this implication, that Mr. Foster was in some process to try to get the original files of the firm into somebody's hands so they could be destroyed? Was that the impression that you got?

Mr. Massey stated:

Answer: Absolutely not. That was not my impression.

Question: Because that seems to be the implication of some of the questions and you may not perceive that sitting down there but—

Mr. MASSEY. I don't perceive that.

Question: —we'll see that sliced and diced and appearing in the newspaper in some other context tomorrow unless we are very clear about it, so I want to make it very clear in my question to you as to whether you took Mr. Foster's request to you as implying that something untoward or improper was about to happen to these files?

Answer: I told you, again as I said earlier, my impression was he was putting together a—I have no reason to disbelieve him, he was putting a firm story together.

Question: Now in point of fact, Mr. Foster knew that you had made a copy of all of your materials at the time that you gave him the copy because you told him that?

Answer: Yes.

I think that's enough out of the transcript for you to be assured that it was not Mr. Massey's testimony or anyone's suggestion who was involved at the time that Mr. Foster's request was in some way related to destroying documents, but it was rather in all ways consistent with the firm being able to review the materials so as to give accurate answers to the inquiries that were being made.

Mr. HUBBELL. OK.

Mr. BEN-VENISTE. Do you have anything to add now that you have heard Mr. Massey's testimony repeated in context?

Mr. HUBBELL. No. Anybody who knew Vince Foster knows that he would never be involved in trying to assemble files so that they could be destroyed. What we were trying to do back then was assemble the files so we could know what happened. People were on the road, and we needed to find out what was in the files so that we could tell people what the truth was.

Mr. BEN-VENISTE. Thank you. Mr. Chairman, my red light is on.

The CHAIRMAN. Mr. Hubbell, is this the fourth time you have been here?

Mr. HUBBELL. I couldn't tell you, Senator.

The CHAIRMAN. Yes, I believe it is. You have been here a number of times.

Mr. HUBBELL. Yes.

The CHAIRMAN. Recognizing all that you have been through, I've made a very conscious and concerted effort to extend to you every possible courtesy. I hope you understand and realize that and I hope it's come through.

Mr. HUBBELL. Yes, it has, Senator.

The CHAIRMAN. This may be a departure to a certain extent, but I want you to be as candid as you possibly can.

Mr. HUBBELL. OK.

The CHAIRMAN. Because I have some very real trouble with what I have heard so far on a particular issue, and, by the way, I don't think there should be, I am going to ask you to carefully think back to the document that you received. It is S 10097 from the FDIC, a memorandum to Chairman Hove from Douglas H. Jones, Acting General Counsel. We have referred to it before. I believe you have it in front of you.

Mr. HUBBELL. I do.

The CHAIRMAN. Now share with me what we see at the top in terms of the faxing. This was obviously sent to the Justice Department by the FDIC, and you received it at 14:29; is that right? Take a look at the little fax marks.

Mr. HUBBELL. It says "sent by" and it's whited out. Then it says 2/17/94 14:29, so that's 2:30.

The CHAIRMAN. It came into the Justice Department at that point in time?

Mr. HUBBELL. Right.

The CHAIRMAN. And then what do we see transpired? You're a smart guy. You have looked at this thing. I'm asking you to give me what you would sense, by reading this document, took place?

Mr. HUBBELL. Above that, it says 2/17/94 15:01, which would be 3:00 p.m.

The CHAIRMAN. Right.

Mr. HUBBELL. It says 202-514-0238 DOJ/OAAG, which I would assume to be the Office of Associate Attorney General.

The CHAIRMAN. Right. They faxed it out.

Mr. HUBBELL. Yes, I guess. I didn't deal with fax machines.

The CHAIRMAN. We received this from the White House—

Mr. HUBBELL. OK.

The CHAIRMAN. —when we made our document request. So, Mr. Hubbell, is it safe to assume that this document came into either your possession or someone—I'm going to say into your possession because this document concerns—a key part of it is your testimony to the FDIC?

Mr. HUBBELL. Yes. Did I—

The CHAIRMAN. There's nothing wrong with this. Now look—

Mr. HUBBELL. I don't know what the question is.

The CHAIRMAN. The question is, is it safe to assume that you received this? This is the FDIC sending this to you at the Justice Department.

Mr. HUBBELL. I don't know when this report came out. I recall getting a draft. I thought it was that morning.

The CHAIRMAN. Good. So you got this draft—

Mr. HUBBELL. No, I got a draft.

The CHAIRMAN. You got a draft. Is it safe to assume that it was this draft?

Mr. HUBBELL. I don't know, Senator. The reason being—and I am not trying to play games with you—I received a draft from Jack Smith. My memory was it was that morning. Now, I have been questioned by a lot of folks, and I think I have seen that fax's transmittal sheet.

The CHAIRMAN. But it did come to you?

Mr. HUBBELL. A draft did. Whether this is it or not, I don't know, but I assume it is, sure.

The CHAIRMAN. OK. A reasonable person would assume that this is the draft that you were sent from the FDIC, which encompasses some of the testimony you gave in connection with this matter which was a Rose representation?

Mr. HUBBELL. Right.

The CHAIRMAN. And the question of whether or not there was a conflict?

Mr. HUBBELL. Right.

The CHAIRMAN. Within an hour, an hour plus 2 or 3 minutes—is that right?

Mr. HUBBELL. Right.

The CHAIRMAN. —this was then sent to the White House. Now it was faxed out an hour later.

Senator SARBANES. Half an hour.

The CHAIRMAN. Within an hour it was sent out; right?

Mr. HUBBELL. That's what it appears to say.

The CHAIRMAN. And we get this, we being the Committee, from the White House; right? I am telling you we did, that we received this from the White House.

Mr. HUBBELL. I'll accept that, sure.

The CHAIRMAN. Why did you send it there?

Mr. HUBBELL. I don't know. They probably asked for it.

The CHAIRMAN. They probably asked for it?

Mr. HUBBELL. Yes.

The CHAIRMAN. Do you recall speaking to someone?

Mr. HUBBELL. No, I don't recall, but I don't have my calendars with me. I might be able to help if I had my calendars with me.

The CHAIRMAN. Then I am going to ask Mr. Nields if you would make Mr. Hubbell's calendars available to the Committee staff, and we will ascertain whether or not we have to go in to examine it. Would you—

Mr. HUBBELL. I thought we had already done that. You have them.

The CHAIRMAN. So you don't recall at this time?

Mr. HUBBELL. No.

The CHAIRMAN. And you don't recall at this time who may have asked—

Mr. HUBBELL. No.

The CHAIRMAN. Were you dealing with anybody at the White House in connection with this?

Mr. HUBBELL. I'm 80 percent sure that it would be Mr. Nussbaum.

The CHAIRMAN. OK. Now that begins to tell us a little story. You send this over to the White House. You don't have actual recollection that you sent it, but you wouldn't disbelieve that you ordered it sent over. I'm not saying that you faxed it yourself, but you told somebody to send it over.

Mr. HUBBELL. Right.

The CHAIRMAN. Is that a fair assumption?

Mr. HUBBELL. A fair assumption is that I got this and that I asked somebody to send it over to Bernie's office. That would not surprise me at all, Senator.

The CHAIRMAN. That's within about an hour that you had it sent over. You received it and within an hour you sent it over there.

Mr. HUBBELL. Right.

The CHAIRMAN. Do you recall, did anybody from the White House ask you to provide them with information with respect to Rose Law Firm transactions?

Mr. HUBBELL. On that day or overall?

The CHAIRMAN. During that period of time.

Mr. HUBBELL. This period of time was in February 1994. I would probably have been dealing with Mr. Kennedy, who was a former Rose Firm person, Mr. Klein, or perhaps Mr. Nussbaum. I believe it may have been Mr. Nussbaum.

The CHAIRMAN. Let me ask you about Mr. Eggleston. Did you speak to him?

Mr. HUBBELL. Mr. Eggleston?

The CHAIRMAN. Yes. That's the New York accent, Mr. Eggleston.

Mr. HUBBELL. It is certainly possible that I talked to Neil. I just don't know.

The CHAIRMAN. Were you aware of the fact that he was putting together a confidential memorandum in regard to the Resolution Trust Corporation and the work of the Rose Law Firm and Mrs. Clinton?

Mr. HUBBELL. No, I was not.

The CHAIRMAN. You were not aware?

Mr. HUBBELL. No, I was not.

The CHAIRMAN. Do you have a document entitled 1720, a memorandum, in front of you? Put it up on the Elmo.

Mr. HUBBELL. No, I don't.

The CHAIRMAN. It is a memorandum sent to the First Lady from Harold Ickes dated March 1, re: Resolution Trust Corporation. Attached is a copy of Neil Eggleston's February 28th—you see—

Mr. HUBBELL. Yes.

The CHAIRMAN. —“1994 memorandum regarding certain issues involving the RTC and the Rose Law Firm.”

Mr. HUBBELL. I see this, yes.

The CHAIRMAN. Did anybody contact you with respect to making information available to Mr. Eggleston with respect to this?

Mr. HUBBELL. If they did, I would have complied. I just don't remember talking to Neil about it.

The CHAIRMAN. That's what I'm trying to find out. For example, if you sent this memorandum in compliance to that request because this memorandum was attached. Was the memorandum that came from the FDIC attached to Mr. Eggleston's report?

Mr. HUBBELL. No, I don't recall that. I am being candid. If Mr. Nussbaum said when you get the report, send me a copy or send it to Neil, I would have done so.

The CHAIRMAN. But that's why I told you, and why I wanted to get a little more specific, that this wasn't just some document that was floating around and you had no way of knowing it went over. It is logical to assume that you directed this be sent to the White House?

Mr. HUBBELL. I didn't mean to say that I never did it. I just don't have any memory of doing it.

The CHAIRMAN. I just want to make it clear that it was sent over.

Mr. Chertoff.

Mr. CHERTOFF. Just to follow up on this, Mr. Hubbell, you were interviewed by the FDIC in connection with this report; right?

Mr. HUBBELL. I was interviewed by the FDIC in connection with their investigation, yes.

Mr. CHERTOFF. That was in 1993?

Mr. HUBBELL. I believe so.

Mr. CHERTOFF. Late 1993?

Mr. HUBBELL. I believe so.

Mr. CHERTOFF. So it was about 18 months after you had reviewed the Rose Law Firm records; right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Now, you understood when the FDIC talked to you that this was a serious matter?

Mr. HUBBELL. I understood that they were doing an investigation of the Rose Firm conflicts, yes.

Mr. CHERTOFF. You understand that an investigation by a Federal agency about whether there's a conflict of interest in the handling of Federal work is a serious matter; right?

Mr. HUBBELL. I certainly understand that now.

Mr. CHERTOFF. In fact, is it fair to say at the same time in 1993, you were preoccupied with other matters involving billing that are unrelated to this?

Mr. HUBBELL. That was another issue that was going on at that time, yes.

Mr. CHERTOFF. So, in your mind, the notion of being investigated and asked questions would have been something that would have been a pretty notable event at this period of time while you were the Associate Attorney General; right?

Mr. HUBBELL. I have to say that that's not true.

Mr. CHERTOFF. It was not a notable event?

Mr. HUBBELL. It was not a notable event.

Mr. CHERTOFF. It's surely not common for high-ranking Justice Department officials to be the subjects of investigation as opposed to those who are doing the investigating.

Mr. HUBBELL. I understand that. I just had a lot going on.

Mr. CHERTOFF. Is there any reason that you would have withheld information deliberately from the investigators?

Mr. HUBBELL. No, I would not have.

Mr. CHERTOFF. You understood that this issue of the conflict of interest of the Rose Law Firm opened up the whole question of what the Rose Law Firm did for Madison Guaranty and for Madison Financial back in the mid-1980's; right?

Mr. HUBBELL. My understanding was that they were looking at the issue of the conflict to determine whether there was a conflict. I didn't understand that they were going to be looking at everything the Rose Law Firm ever did for Madison. I just didn't understand that.

Mr. CHERTOFF. You understood that the whole issue of the conflict revolved around the work and the relationship between the law firm and Madison?

Mr. HUBBELL. I didn't see it that way, Mike.

Mr. CHERTOFF. You didn't think they were going to get into what work was done for Madison?

Mr. HUBBELL. No, I didn't.

Mr. CHERTOFF. And they, in fact, told them about your knowledge of work that the firm had done in connection with the securities issue?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. So that issue of work came out on the table when you talked to the investigators?

Mr. HUBBELL. They asked me about it, I believe, yes.

Mr. CHERTOFF. Now in your mind, had you made a decision that you were going to be very narrow in the way you answered questions; in other words, you were going to wait to see if they asked you specific questions and give answers as opposed to volunteering things?

Mr. HUBBELL. I didn't make a conscious decision at all. I got a call from Jack Smith. He said we need to come over and interview you, and I said come on.

Mr. CHERTOFF. Who is Jack Smith?

Mr. HUBBELL. The General Counsel for the FDIC.

Mr. CHERTOFF. Is he a friend?

Mr. HUBBELL. I wouldn't say he's a friend, but I certainly knew him.

Mr. CHERTOFF. He didn't do the interview, though; right?

Mr. HUBBELL. I can't tell you who did the interview at this point.

Mr. CHERTOFF. There were investigators, I assume, who did it?

Mr. HUBBELL. Yes, I thought Jack came over, but maybe I was wrong.

Mr. CHERTOFF. The General Counsel himself may have came over for the interview?

Mr. HUBBELL. I don't have those records in front of me, but I know that Jack called me back and had some further questions.

Mr. CHERTOFF. About what?

Mr. HUBBELL. I wish I knew. I can't tell you off the top of my head, but they set up a conference call where they called back after they interviewed me.

Mr. CHERTOFF. Who was in on the conference call?

Mr. HUBBELL. The FDIC.

Mr. CHERTOFF. I beg your pardon?

Mr. HUBBELL. The FDIC and me.

Mr. CHERTOFF. All right. Now at some point you were asked a question about documents that had been drafted that were involved in the Ward litigation; right? I'll direct your attention to page 4 of this FDIC report, the very bottom of the text portion right before the footnotes. It says:

Mr. Hubbell also confirmed in an interview that he had not—

Mr. HUBBELL. What page?

Mr. CHERTOFF. Page 4.

Mr. HUBBELL. All right.

Mr. CHERTOFF. It states:

Mr. Hubbell also confirmed in an interview that he had not drafted any documents that were involved in the Ward litigation.

You were familiar with the Ward litigation; right?

Mr. HUBBELL. I was familiar with it.

Mr. CHERTOFF. Because Mr. Ward, in fact, tried to get you to represent him in it?

Mr. HUBBELL. He did.

Mr. CHERTOFF. You referred him to Mr. Jennings?

Mr. HUBBELL. No. I declined to take on the representation.

Mr. CHERTOFF. And he went to Mr. Jennings?

Mr. HUBBELL. He went to Mr. Jennings.

Mr. CHERTOFF. You attended the trial?

Mr. HUBBELL. I attended parts of the trial.

Mr. CHERTOFF. Including the closing argument?

Mr. HUBBELL. I did.

Mr. CHERTOFF. You knew the option had come up in the trial.

Mr. HUBBELL. I don't know that, but I am not surprised that it came up in the trial.

Mr. CHERTOFF. You knew as of 18 months before that Mrs. Clinton had had a number of conversations with Mr. Ward during the period of time relating to these Castle Grande transactions?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. And that she had worked on the option because you had seen it with your own eyes when you looked at the records 18 months before?

Mr. HUBBELL. I looked at the bills. I didn't focus on the fact that she had prepared the option.

Mr. CHERTOFF. Did you focus on the fact that she had numerous conversations with Seth Ward?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. And you didn't bring that up in the context of this discussion with the FDIC people?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. When you saw the report, did you say to yourself, maybe I ought to tell them that there was some additional work that was done that involved Mrs. Clinton and Seth Ward?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. I think I'm out of time, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Hubbell, this report we're talking about of the FDIC, do you have it in front of you, February 17, 1994?

Mr. HUBBELL. I do.

Senator SARBANES. On the cover, there was a memorandum to the Chairman from the Acting General Counsel; is that correct?

Mr. HUBBELL. Yes.

Senator SARBANES. It says:

As you requested, we have reviewed the FDIC's 1989 retention of the Rose Law Firm with respect to Madison Guaranty Savings & Loan. Attached is a report on our review and findings. As you can see from the report, we found no basis to conclude that the retention involved a conflict of interest by the law firm. Accordingly, we are not recommending any sanctions against the firm.

Then it says "Attachment" and the attachment is the Legal Division report on the retention of the Rose Law Firm for the Madison Guaranty Savings & Loan conservatorship; is that correct?

Mr. HUBBELL. That's correct.

Senator SARBANES. It's my understanding the FDIC released this report that very day. Do you know whether that's the case?

Mr. HUBBELL. My recollection was that I received a call from Mr. Smith who said they were going to release the report that day. I asked if I could get a copy of it, and he said since we're releasing it today, I see nothing wrong with that, and he sent me a copy. That's why I had some recollection that I may have received the draft that morning as opposed to that afternoon, and then it appears that that afternoon, I received the final version.

Senator SARBANES. There was a story apparently in the paper the next day—this was on the 18th—saying the Federal Deposit Insurance Corporation issued a report yesterday saying it would not seek legal sanctions against the Rose Law Firm of Little Rock. Apparently, at about the time you were sending this over to the White House, the FDIC was releasing it. Was that your understanding?

Mr. HUBBELL. That was my understanding. They were going to release it that day.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. So it is consistent with your recollection, Mr. Hubbell, that sending the White House a courtesy copy of that which had been sent to you was sent by you on the understanding that the FDIC was going to make a public release of that document that very same day?

Mr. HUBBELL. Absolutely.

Mr. BEN-VENISTE. And, indeed, they did so?

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. We have the release in our Committee, and I believe we were even sent a copy of that release on that day.

You say you attended the closing argument in the trial of the Ward versus Madison case; is that correct?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. You were asked a question as to whether you had some understanding as to whether the option agreement was an important document or issue in that case. We know that the option agreement was the subject of testimony in the case, but do you have any understanding of whether that document was an important issue in the trial?

Mr. HUBBELL. I recall the issue being the commissions and whether the commissions had been paid or not as being the focus of the lawsuit.

Mr. BEN-VENISTE. Did you understand on the basis of your information as of the time you attended the trial as to whether that option was ever exercised?

Mr. HUBBELL. I do not know one way or the other.

Mr. BEN-VENISTE. It is our understanding here that the option was indeed never exercised, but did you have some idea of a theory as to how that document could be a critical document in the Ward versus Madison trial?

Mr. HUBBELL. I don't, not one way or the other. I don't understand the option issue.

Mr. BEN-VENISTE. Now, Mr. Jennings was deposed by our Committee just yesterday, and earlier this morning, Majority Counsel referred you to a portion of it, and I showed you another portion. I would like to refer to Mr. Jennings' testimony of February 6th at page 37. Again, this is Mr. Jennings testifying about the trial in which he participated as Mr. Ward's counsel. He was asked:

Question: So, just to recap the position of Mr. Ward during this litigation, hopefully succinctly, was that he was owed some commissions, at least \$300,000 worth. The evidence of that amount owed was the promissory note that Madison executed in his favor for \$300,000?

Answer: Well, it was in lieu of \$300,000 in cash. They told him they didn't have the money to pay him.

Question: And the transaction relating to the loan, the \$400,000 loan secured by Holman Acres was independent of the commissions?

Answer: My understanding it was totally independent of the commissions.

Question: Likewise, the May 1, 1986 option?

Answer: Totally independent, as far as I knew.

Is that testimony by Mr. Jennings before this Committee in deposition inconsistent with any understanding you have of the facts involved in that dispute?

Mr. HUBBELL. It's not inconsistent with the facts. Mr. Jennings would know. He's the one who tried the lawsuit.

Senator SARBANES. We'll pass it back.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Hubbell, when you last testified here, you said that David Kendall went to your home and retrieved files from the campaign known as the Betsey files.

Mr. HUBBELL. I did say that, yes.

Senator FAIRCLOTH. Given Mr. Kendall's reputation, I'm going to assume that all of the documents that he had which were subpoe-

naed had been turned over. I don't think Mr. Kendall would have held out any documents, do you?

Mr. HUBBELL. No, I do not.

Senator FAIRCLOTH. I'm assuming Bob Barnett was being honest with the Committee when he catalogued documents that came from Vince Foster's office which were carried over by Maggie Williams in a box to the residence. Would you not agree that Mr. Barnett is a reputable attorney?

Mr. HUBBELL. Mr. Barnett is a very reputable attorney.

Senator FAIRCLOTH. This being the case, Mr. Chairman, what we have is documents with Vince Foster's handwriting on them that were not in Mr. Hubbell's possession, nor were they among the documents that Maggie Williams took from Mr. Foster's office 2 days after his death. So we are forced to some pretty narrow conclusions, that these documents were either in the White House the entire time or that they came out of Mr. Foster's office on the night of his death and no attorney had seen them until now.

If this is the case, either the White House has obstructed justice or we didn't get the truth about what Maggie Williams took out of his office that night. I don't see how we could draw any other conclusion.

Mr. Hubbell, on DKSJ 29011—do we have that document there? It's a memo that you were sent on the Castle Grande matter.

Mr. HUBBELL. Are you referring to a reference in the bill that said I sent a memo?

Senator FAIRCLOTH. I only have the number here, DKSJ—it's on the screen there.

Mr. HUBBELL. OK.

Senator FAIRCLOTH. You were sent a memo on the Castle Grande matter in October, and this is one of the first items on the IDC/Castle Grande matter, but after this one entry, it seems that you trail off and Mrs. Clinton becomes one of the main actors talking to your father-in-law on many occasions involving the IDC/Castle Grande matter. Do you have any idea what the nature of the conversations would have been?

Mr. HUBBELL. With Mrs. Clinton and between my father-in-law and Mrs. Clinton?

Senator FAIRCLOTH. Yes.

Mr. HUBBELL. No, I do not.

Senator FAIRCLOTH. Why was Mrs. Clinton involved in the issue? Why did your father-in-law need her, do you know?

Mr. HUBBELL. My understanding was that she and other partners in the firm were looking at matters involving the wet/dry issue, whether you could or couldn't drink in a certain county or township in Arkansas, and certain issues arising out of Castle Water and Sewer.

Senator FAIRCLOTH. I have a lot of trouble with this. Mrs. Clinton was one of the top 100 lawyers in the Nation, so we were told, and she's working very closely with your father-in-law on what proves to be a sham deal, very much so. I find it hard to believe she could be this involved and not know it was a sham deal. Do you think that's possible, that she didn't know?

Mr. HUBBELL. I don't know that it was a sham deal, but I certainly don't believe Mrs. Clinton believed it was, nor did my father-in-law.

Senator FAIRCLOTH. You don't think all these floats back and forth were a sham deal?

Mr. HUBBELL. What I know of the transaction is that the property was bought and then sold and that's what our firm worked on. It was sold to some very reputable people in Arkansas, including Senator Fulbright, and if somebody told me they sold 100 acres to Senator Fulbright, I wouldn't assume it was a sham deal, and I don't today.

Senator FAIRCLOTH. If these transactions and so-called land flips aren't sham deals, then I don't understand what one is. Let me ask you, why did you not disclose to Ms. Breslaw the Rose Law Firm's representation of Madison Guaranty Savings & Loan in connection with Castle Grande?

Mr. HUBBELL. At the time I talked to her about it, to be honest, I don't believe I remembered that we closed that transaction. I want to try to put this in context. Our firm represented Madison. We represented Madison for some 15 months. Five years later, we get a call and they say Madison has sued their accountant, can you take that litigation over. I looked at it in that context, that we were simply being rehired by the same client, and that's the way I looked at the conflict. Right or wrong—if I'm wrong, I'm wrong. The facts bear it out, but at that time I was simply looking at it as we had represented this client 5 years earlier, the client had hired another lawyer to sue its accountant, and we were asked on behalf of that same client to take over litigation that had already begun.

Senator FAIRCLOTH. Seth Ward had the reputation of being a man of all business, talked business, pretty much concentrated on business and not much else; is that correct?

Mr. HUBBELL. That is correct.

Senator FAIRCLOTH. He was a client of yours while you were at the Rose Law Firm?

Mr. HUBBELL. That's correct.

Senator FAIRCLOTH. As well as a client of Hillary Clinton's?

Mr. HUBBELL. I don't know that Mr. Ward personally was a client of Mrs. Clinton's, but he was certainly a client of the firm and she may have done some work for him in that respect. She did a lot of work with him on behalf of another client of the firm.

Senator FAIRCLOTH. Did you know Seth Ward was involved with Jim McDougal in the Castle Grande development?

Mr. HUBBELL. Yes, I did.

Senator FAIRCLOTH. Did he tell you or did you know that he got a \$1 million nonrecourse loan and a \$300,000 commission?

Mr. HUBBELL. I knew that he got that loan and I knew that he claimed and won a lawsuit over that commission, yes.

Senator FAIRCLOTH. You still contend that you don't think that transaction was what would be called a sham transaction. You think that was a clean-cut land deal?

Mr. HUBBELL. It was a land deal, and I have not been presented the evidence that apparently this Committee has, but from what I know of it and knew then, it was a real estate transaction where property was bought and property was then sold. I know because

I represented the FDIC in Frost, and subsequent parts of the parcels that were sold had some questionable aspects to them, but the original transaction I don't necessarily allude to as a sham deal, Senator.

Senator FAIRCLOTH. Did Mr. Ward ever ask your advice about the trade?

Mr. HUBBELL. Trade, sir?

Senator FAIRCLOTH. The deal, the land deal?

Mr. HUBBELL. He told me what had happened, yes.

Senator FAIRCLOTH. He didn't ask your advice on how to do it?

Mr. HUBBELL. No. He was certainly capable of taking care of the transaction on his own.

Senator FAIRCLOTH. The last time you were here, I asked you whether you had met with Jim Guy Tucker on September 5, 1993, and you said no. Now, I would like to ask you, did you speak or meet with Governor Tucker in September or October 1993?

Mr. HUBBELL. I don't recall talking to or seeing Governor Tucker until the funeral of the President's mother.

Senator FAIRCLOTH. So you did not meet with him in September or October 1993?

Mr. HUBBELL. No.

Senator FAIRCLOTH. When you began service over at the Justice Department, when you arrived at the Department of Justice, had someone prepared a briefing book for you to become familiar with the important issues that were coming before the Justice Department?

Mr. HUBBELL. They did not prepare it for me. They prepared it for the Attorney General designate.

Senator FAIRCLOTH. Was there anything in the briefing book relating to the criminal referrals or investigation of Madison or Whitewater in any way?

Mr. HUBBELL. The books I reviewed didn't have anything about Madison. I don't know that I saw all the books, but the ones I reviewed, they had nothing about Madison.

Senator FAIRCLOTH. None of the briefing books had anything on Madison?

Mr. HUBBELL. None of the ones that I reviewed. There were lots of briefing books prepared, so I can't say every book, but I can say of the ones I looked at, nothing was there about Madison.

Senator FAIRCLOTH. Who is Jack Palladino? Do you know him?

Mr. HUBBELL. Yes, I know of Mr. Palladino. I don't know that I have ever met him personally.

Senator FAIRCLOTH. What were his duties during the campaign, do you know?

Mr. HUBBELL. I believe he was hired as a lawyer and investigator to do certain research on matters that came up during the campaign.

Senator FAIRCLOTH. You got Jack Palladino's phone number from Betsey Wright in June 1993 and you have told the Committee in the past under oath that the call may have been for a reference for Loretta Lynch regarding the President's genealogy chart which Palladino did during the campaign, or you may have been calling to advise him to give up any files he had to the Clintons' personal attorney. Now in June 1993—

Senator SARBANES. Is that from previous testimony given by Mr. Hubbell?

Senator FAIRCLOTH. Yes.

Mr. HUBBELL. I believe he's got it a little mixed up, but I'll be glad to clear it up when he finishes his question.

Senator SARBANES. All right.

Senator FAIRCLOTH. In June 1993, the Clintons did not yet need or have a personal attorney and Betsey Wright, who, upon your request, gave you the Palladino phone number, said it was for something else completely. Would you please tell us what Betsey Wright is talking about and what this was all about? Betsey Wright was completely contradictory to what you had said.

Mr. HUBBELL. I don't know what Betsey is saying. I believe when I testified before, I was trying to surmise why I might have been given Mr. Palladino's phone number by Betsey and those were the three things that came to my mind, a recommendation on Loretta Lynch, an issue regarding a brother or step-brother of the President, or possibly to turn the files over, but I don't know for sure. Whatever Ms. Wright said, I'm sure if she testified that she knows why she gave that to me, she does, but I don't know what she said, so it's hard—

Senator FAIRCLOTH. She said it was on a military issue.

Mr. HUBBELL. A military issue?

Senator FAIRCLOTH. That perks my curiosity.

Mr. HUBBELL. It perks mine, too, but I don't remember that.

Senator FAIRCLOTH. Why would the Deputy Attorney General be calling a private detective on a military issue?

Mr. HUBBELL. I don't know. It doesn't ring a bell to me, Senator. I would have to ask Betsey, and I haven't, in order to know what she's talking about.

Senator FAIRCLOTH. On June 16, 1993, you met with Betsey Wright. Do you remember the meeting?

Mr. HUBBELL. When was this?

Senator FAIRCLOTH. June 16, 1993. You met with Betsey Wright. Do you remember the meeting?

Mr. HUBBELL. June 16, 1993, no, I don't recall that. It's certainly possible, but I don't recall it.

Senator FAIRCLOTH. You don't have any recollection of that meeting. Mr. Hubbell, on July 30, 1993, according to your daily calendar, you traveled to Chicago for the day?

Mr. HUBBELL. Yes.

Senator FAIRCLOTH. This was 10 days after Vince Foster's death?

Mr. HUBBELL. Yes.

Senator FAIRCLOTH. Seven days after the funeral?

Mr. HUBBELL. Yes.

Senator FAIRCLOTH. Would you tell us what the nature of the trip to Chicago was?

Mr. HUBBELL. Yes, sir.

Senator FAIRCLOTH. What was it?

Mr. HUBBELL. I gave a speech to the Federal Magistrates Association and then returned home. Federal magistrates being the Federal judges—the label “magistrates”—I gave a speech to them and came back.

Senator FAIRCLOTH. Mr. Hubbell, your father-in-law, Mr. Ward, and brother-in-law, Mr. Ward, each called you dozens of times while you were at the Department of Justice. Would you mind telling us why they were calling so much?

Mr. HUBBELL. I was in almost daily contact with my father-in-law and brother-in-law for a long period of time because we had been involved in litigation. As I left Arkansas, there were still matters that needed to be cleaned up or matters that they wanted my advice on, and I gave them that advice. One matter involved bills or moneys that were allegedly owed from my brother-in-law to my law firm. That's why I talked primarily to my brother-in-law. My father-in-law was checking on me as a family member, but also was involved in the matter of cleaning up some of his affairs and would tell me what was going on.

Senator FAIRCLOTH. Was this cleaning up having to do with Castle Grande or Madison issues?

Mr. HUBBELL. One of the issues was that he was attempting to settle with Madison, and he informed me of what his lawyer was recommending.

Senator FAIRCLOTH. Thank you, Mr. Chairman. That's all I have.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Hubbell, as I understand it from the previous questions, you went to Chicago on July 30th and spoke to the Federal Magistrates Association?

Mr. HUBBELL. Yes, sir.

Senator SARBANES. The question noted that this was 10 days after the death of Vince Foster—

Mr. HUBBELL. Yes.

Senator SARBANES. —and 7 days after his funeral.

Mr. HUBBELL. Yes.

Senator SARBANES. Did going to speak to the Federal Magistrates Association in Chicago on July 30th have any connection with the death of Vince Foster or with his funeral?

Mr. HUBBELL. No, sir.

Senator SARBANES. None at all?

Mr. HUBBELL. None at all. It was a commitment I had made and that I kept.

Senator SARBANES. Even though the fact was that it occurred 10 days after Foster's death, it just happened you went on about your schedule?

Mr. HUBBELL. It had been scheduled, and I think by that time I was back in Washington.

Senator SARBANES. The fact that it was 7 days after the funeral just happened?

Mr. HUBBELL. Yes. It had nothing to do with the speech. The speech had been scheduled a long time before that.

Senator SARBANES. I understand. Thank you very much.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. I want to give you the opportunity to add anything to your response with respect to the conversation with or about Mr. Palladino, Mr. Hubbell.

Mr. HUBBELL. When I was asked before, why would Betsey have given you his number, I believe I tried to guess as to why it was.

I don't know what Betsey said, but if she said it was for such-and-such reason, I would believe it. I just don't know what she said.

Mr. BEN-VENISTE. We don't have that transcript. We're going to try to find it and help you with it because there isn't going to be any secret about it, but in terms of the testimony that you have provided before this Committee in deposition, you did indeed indicate that there was an issue with respect to the President's genealogy with respect to his half-brother—

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. —that Mr. Palladino was asked to provide some assistance on?

Mr. HUBBELL. Mr. Palladino had done some work on that issue during the campaign and the file that I delivered to the White House was his work.

Mr. BEN-VENISTE. Let me go now back to the issue involving your knowledge of the transactions under which the large tract of land was acquired by Madison and your father-in-law from the IDC. That was in excess of a thousand acres?

Mr. HUBBELL. Right.

Mr. BEN-VENISTE. Now, you have indicated that it was your view, contemporaneous with having learned about the deal from your father-in-law, that you did not think that there was anything inappropriate or improper in connection with the acquisition?

Mr. HUBBELL. With the acquisition, no.

Mr. BEN-VENISTE. In terms of the purchase price, we have had testimony from the attorney who represented the seller as well as Mr. Thrash and Mr. Fitzhugh, all of whom have testified under oath that the price which was paid for the land was the subject of hard bargaining between the parties—I notice that you're smiling. Do you have any comment on that observation by those individuals who testified here?

Mr. HUBBELL. Well, I know who was bargaining on one side and I know who was bargaining on the other, and I find it hard to believe there wasn't a lot of hard bargaining. My recollection is that the owners, Industrial Development Company, felt the land was very, very valuable, and that Mr. Ward was equally as adamant that he was going to get it as cheaply as possible for Madison.

Mr. BEN-VENISTE. The price, I think, that was paid for the land was \$1,750,000?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. According to the testimony we have heard and some of the documents we have reviewed, it appeared that there were outstanding mortgages and loans on that property in excess of \$2½ million. Would that provide additional indication that the price which was paid for the land was not excessive?

Mr. HUBBELL. I'm not a real estate appraiser, but I knew about the land because I had been on the city board and as we would try to attract industry to Little Rock, that was one of the primary sites we would try to use. It's not a piece of property that no one was not familiar with. There was some knowledge in the community, people knew the banks were owed a lot of money on it. Looking back on it 12 years ago, I have to say that \$1,750,000 for 1 thousand acres sounds like they got a pretty good deal to begin with.

Mr. BEN-VENISTE. To set the floor here, we've heard no evidence from any person involved in that transaction or seen any document to indicate that the price that was paid for the land in the first place was excessive or that there was some flip going on at the time it was acquired.

Mr. HUBBELL. That's my understanding, and that's what I was trying to focus on, the initial purchase.

Mr. BEN-VENISTE. Right. And the initial purchase was the only transaction that the Rose Firm played any role in in terms of at least Mr. Thrash attending the closing?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Now, you have said, and the evidence supports it and we have all this material from Pillsbury Madison & Sutro who evaluated it, that, subsequently, portions of the land were then sold off, and there were transactions between individuals who could be regarded as insiders who were not dealing on an arm's length basis?

Mr. HUBBELL. That's my understanding.

Mr. BEN-VENISTE. You would have had some pretty direct knowledge of that because, as you say, this was a subject in connection with the later transactions that were involved in the case that you were handling against the auditing firm, Frost & Company?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Clearly, there is a distinction to be drawn between the acquisition of property after hard bargaining and the subsequent sale and resale and resale again and resale again of portions of that property among inside persons who may not have been dealing on an arm's length basis?

Mr. HUBBELL. There is that distinction. I can't today tell you who was buying and selling after that, but I can tell you on the first go-around, it looked like a good deal for Madison.

Mr. BEN-VENISTE. I have nothing further at this time, Mr. Chairman.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Welcome, Mr. Hubbell. I want to follow up on a couple of points made earlier today. We very much appreciate your testimony because this helps us fill in some very key areas. You were managing partner of the Rose Law Firm during what period?

Mr. HUBBELL. I'm not sure I actually ever officially had that title, but in the same role that Mr. Kennedy had after me and Mr. Clark has now, I believe I played that role essentially from 1986 to about 1988.

Senator BOND. Now during that time, did you have a policy in the Rose Law Firm about the control of the files and the client's right, if any, to control those files?

Mr. HUBBELL. Not that I'm aware of.

Senator BOND. So it is your testimony that the Rose Law Firm was not constrained by consent of the client to reveal the contents of any files to someone who either was a partner in the law firm or a former partner in the law firm?

Mr. HUBBELL. I didn't mean to say that. You asked if we had a policy, and I don't believe we had a policy. But, certainly, how we handled a client's files and business is subjected to whatever agreement we had with the client, plus the Code of Professional Responsibility and the Model Rules of Conduct.

Senator BOND. To what extent do you feel those constraints limit your ability to share the files of a client with persons other than the attorneys employed by the firm working on the case?

Mr. HUBBELL. I have to say, I felt no restraint within the firm.

Senator BOND. Did that apply to former partners of the firm? Could you share those files with people who had been partners of the firm?

Mr. HUBBELL. I think it would relate to whether that partner had worked on the file. I don't remember that coming up, but it certainly could have, Senator.

Senator BOND. Was there any constraint in the Rose Law Firm on the ability of the persons in control of the files to share those files with any partners? Did you have to get consent of the client to share those with people who were not partners working on the case?

Mr. HUBBELL. If they were employees of the firm, subject to some individual agreement with the client, I'm not aware of any restrictions that may have applied.

Senator BOND. May I ask you, was it the policy of the law firm to share the files with someone who was not a partner of the law firm?

Mr. HUBBELL. Not an employee of the firm?

Senator BOND. Not an employee of the firm.

Mr. HUBBELL. No, except for several circumstances where partners left the firm who took files with them because they were going to continue to practice, and we were going to continue to represent those clients.

Senator BOND. Was that done with the consent of the client?

Mr. HUBBELL. I have to say in the two circumstances I'm thinking of, I'm not sure whether we got the consent of the client or not.

Senator BOND. Would it have been your policy not to share the files without the consent of the client?

Mr. HUBBELL. What I'm trying to say is we didn't have a policy. We had some restrictions that applied, but they weren't policies. There wasn't a written policy of the firm about client's files.

Senator BOND. Now earlier this morning you answered questions about the Madison Guaranty files.

Mr. HUBBELL. Right.

Senator BOND. And you said those were Madison Guaranty files.

Mr. HUBBELL. Right.

Senator BOND. In the time that we're speaking about, the questions in 1992 and 1993, Madison Guaranty had been taken over by the RTC, had it not?

Mr. HUBBELL. That's correct.

Senator BOND. Was the RTC at that time then in the position of the client?

Mr. HUBBELL. I don't know the answer to that question. I know that was an issue in 1992, as to who was the client in connection

with Madison that might be able to waive a privilege, an attorney-client privilege.

Senator BOND. You did not discuss, therefore, the sharing of the Madison files with others during that time period. Did you seek any clarification?

Mr. HUBBELL. No, I did not. The point, I think correctly, is that I never called the RTC, and I do not believe Mr. Foster or Mr. Massey or anybody else did, to my knowledge, to say we have this inquiry. We want you to waive the privilege. We didn't do that to the RTC.

Senator BOND. Mr. Hubbell, in the latter part of 1993, what was your position in the Department of Justice?

Mr. HUBBELL. Associate Attorney General.

Senator BOND. As Associate Attorney General, would you have felt comfortable sharing the files of the Federal agency with a private attorney?

Mr. HUBBELL. It depends on who that attorney was.

Senator BOND. A private attorney.

Mr. HUBBELL. A file of—

Senator BOND. A Federal agency.

Mr. HUBBELL. A Justice Department file that I just turn over to a private attorney?

Senator BOND. Yes.

Mr. HUBBELL. Who had no connection to the litigation or whatever we were working on?

Senator BOND. Yes.

Mr. HUBBELL. I'm trying to understand your question.

Senator BOND. Well, let me be quite frank. I am very much troubled about the way you handled the files, and I'm trying to find out what the policy was, whether the Rose Law Firm had any strictures on the sharing of files. The RTC was engaged in litigation and its file on the FDIC continues that litigation. The subject of that litigation involved Madison Guaranty and the efforts by the Government to recover for the RTC sums lost through the Madison Guaranty. You had files which came into your possession—I believe you said it was September that you knew that there had been criminal referrals involving Madison Guaranty, was it not?

Mr. HUBBELL. I believe by sometime in September I was aware that there was a criminal referral involving Mr. McDougal and Madison.

Senator BOND. I am very puzzled why in November you felt it appropriate to share those files, to turn over those files to Mr. Kendall, who is a private attorney. He may or may not have had other clients who were involved, but certainly some of his clients had connections with Madison Guaranty. What was the justification for turning over those files?

Mr. HUBBELL. Let me see if I can help. The files we're talking about, those three files, were Rose Law Firm files of work done for Madison. They weren't Madison's files, OK?

Senator BOND. I don't—

Mr. HUBBELL. We can talk about that, but I'm trying—

Senator BOND. I think you're dead wrong on that. They are files that were Madison Guaranty files. Madison Guaranty was taken over by the RTC.

Mr. HUBBELL. But they weren't Madison's files. They were the Rose Firm's files. There's a difference.

Senator BOND. Ah, yes. Well, now, wait a minute. These were files of a client, were they not?

Mr. HUBBELL. They were files of work done by the firm for a client. There's a difference.

Senator BOND. You see no problem with sharing files of work done by the law firm for a client without that client's consent?

Mr. HUBBELL. With the counsel for the lawyer who was working on the file, no.

Senator BOND. Mr. Hubbell, it's obvious that we operate under different standards. Let me move on to the review and the pulling of the files back. I believe the computer printouts show that the files were printed out on February 12, 1992. How do you go about pulling those files? What did you have to do to get them out?

Mr. HUBBELL. I think several things—

Senator BOND. Pardon me, let me clarify and say the billing records of February 12, 1992.

Mr. HUBBELL. What I understand you have to do—and I'm not sure I did it—there is a computer system at the firm and somebody who understands computers, not me, would go into the computer records for Madison and pull up what appears to be the first few pages of what the Committee has. In addition, they would have pulled up or found copies of the firm's records, bills sent to the clients, and what is called a billing memoranda, which is usually a computer-generated document that is the backup or what the lawyer uses to prepare a bill.

Senator BOND. You were not able to do this so you called on someone to do it. Do you recall who did this for you?

Mr. HUBBELL. I don't recall who did it. Mr. Foster or I would have asked somebody in the accounting department to do it. I remember specifically one other issue we weren't able to find the records on, but that was one on which I was having direct conversations.

Senator BOND. To your knowledge, were any other copies of those billing records made other than the ones prepared for you?

Mr. HUBBELL. My understanding was that Mr. Massey made copies, but I may be wrong. I remember Mr. Massey telling Mr. Foster he was going to make copies of all the files, but I don't know if he did or not.

Senator BOND. According to information we've already received, you had a conversation approximately 12 days later, on February 24th, with Ms. Susan Thomases about the billing records. Do you recall that conversation?

Mr. HUBBELL. I do not recall the conversation, but I'm sure that I had it.

Senator BOND. Do you recall whether you had the billing records in front of you when you talked with Ms. Thomases or any others about the billing records?

Mr. HUBBELL. No, I do not.

Senator BOND. Do you recall having any other conversation with other campaign officials about the billing records which had come into your possession?

Mr. HUBBELL. I believe that I talked to Ms. Loretta Lynch about them. I believe I did, but I may not have. There may have been others, too.

Senator BOND. But you do not recall who or when you talked with others?

Mr. HUBBELL. This is all in the same time period, but I don't recall the specifics. Loretta was one of those people that I might have talked to. There were other people who worked in the campaign on issues like this, but who I specifically was talking to, I don't know.

Senator BOND. How often did you discuss with people in the campaign the billing records?

Mr. HUBBELL. Not that often. I mean, this was one issue. The issue lasted as long as it was until Mr. Gerth came out with his article, it was an issue from the moment it came up until he came out with the article. People would call and ask me questions.

Senator BOND. These were people from the campaign?

Mr. HUBBELL. Yes.

Senator BOND. Would it have been Mr. Lindsey?

Mr. HUBBELL. No.

Senator BOND. Ms. Wright?

Mr. HUBBELL. I just don't know about that, Senator, whether Ms. Wright did or not.

Senator BOND. Did you talk with President Clinton or Mrs. Clinton about them?

Mr. HUBBELL. No, I did not. Let me go back. I think I've said that it's hard for me to believe that I didn't talk to Mrs. Clinton about this issue at some point. The best of my memory is that it happened after the first net of responses had come out, but I may be wrong. It's just hard for me to believe that I didn't, but I don't have any recollection of doing it. My best memory is that Vince is the one who had talked to Mrs. Clinton about it.

Senator BOND. Now when the article by Mr. Gerth came out—I believe it was March 8th—obviously that was a major concern within the inner circle. Did you discuss the billing records in light of that article with anybody? Did you prepare any memoranda? Did you receive any memoranda or telephone calls about the billing records in the period right after March 8th when the article appeared in The New York Times?

Mr. HUBBELL. My recollection was that the issue about the bills to some extent died down after the first flurry of articles.

Senator BOND. When the article first came out, did you discuss the question with representatives of the campaign or the Clintons?

Mr. HUBBELL. I think that happened before the article even came out, Senator. I think they knew it was coming, and they wanted to get as much information as possible before they responded.

Senator BOND. You transmitted some information to persons you cannot recall prior to the publication of the article, but you do not recall any conversations after the article appeared?

Mr. HUBBELL. I don't recall any conversations after the article, but when I say "article," I don't focus on one article. I focus on an issue. This was an issue. I'm sure that Mr. Gerth was not the only one who wrote about it, but they went on to other issues after that. That's the way I put it in my mind. You say specific people. I read where Ms. Thomases has notes of our conversation. I don't doubt

that. I mean, I know that I talked to somebody. If it was Susan, it was Susan. I don't doubt that. It's likely that it could have been Susan on this issue.

Senator BOND. Thank you, Mr. Hubbell.

Mr. Chairman, I see my time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me be very brief. The issue that was brought out moments ago about your view of files generated by the firm, in terms of legal research and memoranda and the like, is it your experience that attorneys frequently take that material with them when they leave the firm?

Mr. HUBBELL. It has been my experience at the firm that that occurred.

Mr. BEN-VENISTE. Is it also your experience that materials that are generated, essentially work product, for a client are the subject often of articles about the particular legal issues that could be drawn upon?

Mr. HUBBELL. If you're talking real generality, yes.

Mr. BEN-VENISTE. Yes, I want to be more general before we get to the specific.

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. On this issue, because people watching this presume a fact maybe that's not in evidence, but people who are paying attention to these hearings are not all attorneys, for sure, and the practices of attorneys in law firms and what they do with their files and how they treat them is a subject that many people aren't familiar with, I would like to get your understanding. The issue of whether a lawyer's work product are some kind of crown jewels that are owned only by the client who pays the bill and, therefore, can't be used for any other purpose is contrary to my own experience, but you're the witness and I would like to get your general understanding of what happens in the real world in connection with such files.

Mr. HUBBELL. It really depends on what it is. If, for example, you go to a lot of trouble and prepare the ultimate brief, that usually goes in a brief bank somewhere where it's used on a bunch of other cases, usually within the firm, but if the lawyer leaves the firm, he might take all of his briefs with him. If you develop a contract that you're especially proud of, that might leave as well.

The issue is the privilege. Obviously, there are documents that are the client's. If a client comes in and gives me a piece of paper that belongs to him and says keep this until the litigation is over, you usually return it to the client after the matter is over. There's a difference between the client's files and the law firm's files.

Then there are individual agreements with specific clients. You might have a client that says if you do this, I want you to do it under these circumstances and you can agree or disagree, but it's all part of the deal. As to any individual piece of paper generated in the firm, it may or may not be privileged, it may or may not belong to the client, even though, as you said, the client pays for it.

Mr. BEN-VENISTE. In this connection we have had and looked at Mr. Massey's materials which are the subject of these questions. We first find that they were generated in 1985 in response to spe-

cific inquiries about the appropriateness of a particular course of action under Arkansas securities and banking law.

In all respects, it has been testified that these files are completely innocuous. There is no smoking gun in the files. There's nothing improper that Mr. Massey did. There is nothing that's reflected in the files that suggests any untoward motive or intent by any party associated with this issue 11 years ago.

Now the question arises of whether somehow this is a bad thing which happened as a result of Mr. Massey giving Mr. Foster a copy of those files, Mr. Foster reviewing them, the files coming into your possession, you turning them over to Mr. Kendall, and Mr. Kendall sending them back to the firm. We've completed the circuit here, but is there something bad that happened as a result of all that?

Mr. HUBBELL. Not in my opinion. I mean, I had been asked to be custodian of some files that belonged to the Clintons and I did so. I turned them over to the counsel for the Clintons once he was hired, and he determined that those files would go back to the firm, those three files, and they did. As far as I know, they have remained intact from the moment they came into my possession or the moment that they were generated to now.

Mr. BEN-VENISTE. Indeed, on that point, Mr. Massey has testified before this Committee that he compared the materials that were sent back to the firm by Mr. Kendall with the materials that he had retained all along in his possession and he found them to be exactly the same without addition or deletion. With that, I'll cede back my time.

The CHAIRMAN. Senator Moseley-Braun, do you have any questions at this time?

OPENING COMMENT OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. No, I don't, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Hubbell, I'm going to try to get right to the point on this.

Mr. HUBBELL. OK.

Mr. CHERTOFF. With respect to these Rose Law Firm client files that came from Mr. Massey's office—I am not talking about the billing records, I am talking about his client files—which included drafts and letters and notes related to the securities, that material in the Rose Law Firm's files was related to the handling of client work for Madison; right?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Now, Madison was taken over by the RTC, which means, for all intents and purposes, the client decisionmaker was the Resolution Trust Corporation; right?

Mr. HUBBELL. I think certainly that's what we believed. I don't know the answer to that question.

Mr. CHERTOFF. If anyone was going to make use of the files outside of the law firm, it was the RTC that had to give permission for that; right?

Mr. HUBBELL. If they had the right to make that decision.

Mr. CHERTOFF. Madison didn't exist any longer.

Mr. HUBBELL. I understand, but the firm might determine that there was nothing that belonged to the RTC in those files.

Mr. CHERTOFF. Is there any basis on which confidential law firm files related to correspondence and internal notations should have been taken out of the custody and control of the law firm and out of the custody and control of Madison and given to somebody in the campaign?

Mr. HUBBELL. There is a reason to do that.

Mr. CHERTOFF. I know there may be a reason. Is there any basis on which it's proper?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Tell us what that is.

Mr. HUBBELL. If there's an allegation against one of the lawyers that they did something improper, that lawyer is entitled to consult with his or her attorney and to show them what work they did.

Mr. CHERTOFF. I am not talking about taking these documents out and having somebody show them to another attorney in order to prepare a legal response. I am talking about removing the files, these Massey files, and turning them over to the campaign. Is there a basis on which you can justify taking confidential client files out of the custody of the firm without the firm's permission and out of the custody of Madison without Madison's permission or the RTC's permission and turning them over to the campaign?

Mr. HUBBELL. I didn't know that they were turned over to the campaign.

Mr. CHERTOFF. So you have no knowledge if the files that Mr. Foster pulled from Mr. Massey ever wound up with the campaign?

Mr. HUBBELL. Those files, no. You're talking about those three files that I gave Mr. Kendall?

Mr. CHERTOFF. At least those three files, those never went to the campaign?

Mr. HUBBELL. I don't know if they did. I can't say for sure, but I don't believe they did.

Mr. CHERTOFF. Who did you get them from?

Mr. HUBBELL. I believe I got them from Mr. Foster, although they may have been given to him by his secretary or another staff person in the office.

Mr. CHERTOFF. Let's assume for the sake of argument that Mr. Foster kept them within the custody and control of the law firm. Why on earth did he give them to you? Why didn't he just leave them at the firm when he left to go to Washington?

Mr. HUBBELL. I believe he wanted to make sure they stayed intact.

Mr. CHERTOFF. You think he had a question about whether, if he left them at the firm, the firm would somehow destroy them?

Mr. HUBBELL. I don't know that. That would be speculation on my part.

Mr. CHERTOFF. What did you say to him? Here he is. He's got these files. They're Rose Law Firm files. He's giving you the files. You're both leaving as partners in the firm. Don't you ask him why are you giving these to me?

Mr. HUBBELL. No, I did not ask.

Mr. CHERTOFF. You understood you were going to go and take some kind of a Government job in Washington.

Mr. HUBBELL. Yes.

Mr. CHERTOFF. So you were not going to be returning to the firm.

Mr. HUBBELL. No.

Mr. CHERTOFF. Why did you take possession of the files which clearly belonged to the firm or to the client and why did you remove them and take them with you to Washington?

Mr. HUBBELL. I removed them for storage and then they ultimately came to Washington. I'm not splitting hairs——

Mr. CHERTOFF. You are splitting hairs. Why did you take control of those files? Why didn't you simply in January——

Mr. HUBBELL. To maintain their integrity, Mr. Chertoff. Their integrity has been maintained and it has been since this day. Why did I do it? To maintain their integrity.

Mr. CHERTOFF. You were concerned that if you took the files and you gave them back to the Rose Law Firm and left them with your former partners with whom you had practiced for years and years and years, that you couldn't trust them to maintain the integrity of the files?

Mr. HUBBELL. I didn't say I couldn't trust them, but I did maintain their integrity when they were in my possession.

Mr. CHERTOFF. You are going to have to answer the question I asked, Mr. Hubbell.

Mr. HUBBELL. Ask the question, then.

Mr. CHERTOFF. My question to you, Mr. Hubbell, is why did you remove these files——

Mr. HUBBELL. I didn't remove them.

Mr. CHERTOFF. Why did you take these files when Mr. Foster gave them to you and rather than return them to the firm, which was their rightful owner, or contact the firm and ask for permission or contact Madison and ask for permission or contact the RTC and ask for permission, why did you, without doing any of that, take them in whatever kind of container they were in, take them to Washington and ultimately put them in your basement? Why?

Mr. HUBBELL. I wanted to maintain their integrity. That is the answer.

Mr. CHERTOFF. Was there some reason that you felt you needed to have those with you in Washington?

Mr. HUBBELL. If the issue came up, the files would still be in our possession, and we could again show that there wasn't anything improper done.

Mr. CHERTOFF. So you anticipated that the issue of work done for Madison would come up again?

Mr. HUBBELL. No, I did not anticipate—just as with all the files that we got from Betsey, we didn't know if those issues would ever come up again, but if they did, we had it.

Mr. CHERTOFF. The files from Betsey, as I understand it, were campaign files. They weren't in the possession of the law firm and the property of a client; right?

Mr. HUBBELL. Right. I do not contend that those files were the property of the client, Mr. Chertoff. I may be wrong, but I do not believe they were.

Mr. CHERTOFF. They were the property of the law firm, then; is that right?

Mr. HUBBELL. Mr. Kendall believed they were the property of the law firm.

Mr. CHERTOFF. What do you think? Whose property were they?

Mr. HUBBELL. They could have been——

Mr. CHERTOFF. What do you think? Whose property were they?

Mr. HUBBELL. I am clouded in my view by our prior experience at the firm, Mr. Chertoff, that other lawyers when they left the firm were allowed to leave with all of their files, OK?

But, if these were anybody's personal files, they had to be Mr. Massey's files. Mr. Massey stayed at the firm.

Mr. CHERTOFF. These pieces of paper were not your pieces of paper?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. So I would like you to tell us why it is you felt that they were your property to take with you to Washington?

Mr. HUBBELL. I did not consider them my property, but I took them to Washington.

Mr. CHERTOFF. You knew they were not your property?

Mr. HUBBELL. Yes, sir. If you had asked me, I would have said they were not my property.

Mr. CHERTOFF. Did you ask Mr. Massey or Mr. Clark? Did you tell either of them you were taking the files? They were not really yours to take?

Mr. HUBBELL. I did it.

The CHAIRMAN. Why then, after you took them and they weren't yours to take, did you send them to Mr. Kendall?

Mr. HUBBELL. I delivered to Mr. Kendall all the files I had.

The CHAIRMAN. I don't care about all the other files. Why did you send those files, Rose Law Firm files, to Mr. Kendall?

Mr. HUBBELL. Because they were with all the others.

The CHAIRMAN. You sent them all, everything, including these Rose Law Firm files, you just sent them all to Mr. Kendall. Now, Mr. Kendall sent them where?

Mr. HUBBELL. To the Rose Firm.

The CHAIRMAN. Why didn't you just send them to the Rose Law Firm?

Mr. HUBBELL. I just didn't. I don't have a reason. I didn't even think about it.

The CHAIRMAN. Was it because you really were concerned that these files contained important information?

Mr. HUBBELL. I knew that they didn't contain any important information. They are innocuous.

The CHAIRMAN. Sir, you took innocuous files that didn't belong to you, to use your words, in anticipation that it might come up; is that right?

Mr. HUBBELL. As we did with a lot of files.

Mr. CHERTOFF. And it did come up because the FDIC started to investigate; right? You received a call in September 1993 from April Breslaw, she gave you a heads-up that the FDIC was going to now open an investigation into the issues of the Rose Law Firm conflicts?

Mr. HUBBELL. Right.

Mr. CHERTOFF. Jack Smith over at the FDIC picked up the phone in a rather extraordinary—it is just not common every time

someone gets interviewed by the FDIC that the General Counsel personally calls up. He called you up and said he wanted to set up an appointment to have you interviewed about the Rose conflict issue; right?

Mr. HUBBELL. He did.

Mr. CHERTOFF. It was also in October 1993 that Mr. Lindsey was having discussions with representatives of the Treasury Department, on October 14th, because he had heard reports that the issue of you and the Rose Law Firm was somehow percolating up. Do you remember that? Did Mr. Lindsey talk to you about that in October?

Mr. HUBBELL. I am sure he did.

Mr. CHERTOFF. So you had some communication with the White House in October that there was an issue out there involving your work while at the Rose Law Firm in connection with the Frost case, whether there was a conflict of interest, and you had a discussion with Mr. Lindsey about this in October; right?

Mr. HUBBELL. I believe.

Senator SARBANES. October of when?

Mr. CHERTOFF. October 1993. Then we get to February and after you finally sat down with the interviewers from the FDIC, you have not mentioned the information which you had gained 18 months before from the billing records about work being done on the option or a dozen calls to Seth Ward.

They produced their report, which says there is no action that they are going to take, based upon a very, shall we say, much less than complete picture of the facts, and you fax it over to the White House; right?

Mr. HUBBELL. Right.

Mr. CHERTOFF. With whom you have had several discussions through Mr. Kennedy over these past months about this whole issue; right?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. Now after you sent it over to the White House, did you hear back within the next few weeks, either directly from Mrs. Clinton or from anyone on her behalf, indicating to you that she was aware that there was more work that the Rose Law Firm had done for Madison than was disclosed in this FDIC report?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. So after you sent the report over, what was the next conversation you had with somebody concerning this Rose conflicts issue?

Mr. HUBBELL. I can't tell you when the next conversation I had about the conflicts issue was. I really don't know.

Mr. CHERTOFF. See, what's hard about this, Mr. Hubbell, is when we first got into this this morning and we talked about this issue of your faxing over this report, it was just no big deal to you. Now what's emerging is you took records which, frankly, didn't belong to you, based on the anticipation that at some point the issue of the work done by the firm would come up.

You received a call from April Breslaw in September 1993 saying there is going to be an investigation. The General Counsel calls you up in October, wanting to set up an interview for an investigation. You have a conversation with Mr. Lindsey who is having a meeting with Treasury people in which your name and this issue comes up.

You wind up getting the report in February. It contains only an incomplete picture of the work that was done. You don't correct it, you fax it over to the White House. It winds up attached to a memo prepared for the First Lady, that is full of a description of the various actions that might be taken by the RTC against the Rose Law Firm on the issue of this conflict. And then there is some kind of discussion of who is going to make the decision about this after Roger Altman has finally taken himself out of the matter as head of the RTC.

It seems to crop up again and again and again. Yet the two people who were most intimately involved in the firm in 1985 and 1986, in talking to Mr. Ward about this and his involvement in these transactions involving the IDC, are you and Mrs. Clinton. Your testimony is that the two of you neither directly or indirectly communicated about it?

Mr. HUBBELL. If the question is did I talk to Mrs. Clinton about it, the answer is no, I did not.

Mr. CHERTOFF. Now did you talk to somebody else who was acting on her behalf?

Mr. HUBBELL. About what?

Mr. CHERTOFF. About this whole issue of the work done by Rose for Madison.

Mr. HUBBELL. I had, yes.

Mr. CHERTOFF. You talked to Nussbaum?

Mr. HUBBELL. I don't think so. It's possible, but I don't think so.

Mr. CHERTOFF. Eggleston?

Mr. HUBBELL. Boy, that—

Mr. CHERTOFF. Kennedy?

Mr. HUBBELL. Certainly Kennedy.

Mr. CHERTOFF. He was the point of contact?

Mr. HUBBELL. No, I believe by this time—you have to put it in a frame of reference because we had Deputy General Counsels moving in. Mr. Klein, I believe, was, at one point, the point person on this.

Mr. CHERTOFF. I yield the balance of my time to Senator Bond.

Senator BOND. I have just a couple of quick questions. You had the meeting at which you turned over the files to Mr. Kendall on November 17?

Mr. HUBBELL. Yes.

Senator BOND. Did he call you and ask you for those files, or ask you if you had any information?

Mr. HUBBELL. If I can answer that completely, for a long period of time, going back to May and March 1993, we had discussions about getting the files in the hands of a private counsel of the President and First Lady.

Ultimately, I was advised that Mr. Kendall would play that role, and I—

Senator BOND. Mr. Barnett of Williams & Connolly was their attorney who picked up the Foster files on July 27, wasn't he? So they had an attorney, then, that came over and picked up the files?

Mr. HUBBELL. Mr. Barnett, as I understand, was doing some work for the Clintons. When I raised this issue with Mr. Barnett, he said he was going to have to recuse, and that he was trying to get the Clintons to employ Mr. Kendall.

Senator BOND. They had an attorney to whom files were turned over, and it was purely accidental that November 17, 2 weeks, roughly 12 days after what we now know as the November 5 meeting to get all the information, that just became the date that you delivered all these files to Mr. Kendall?

Mr. HUBBELL. I don't think there was anything accidental about it, Senator.

Senator BOND. I don't, either.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBARNES. When was Mr. Kendall employed by the Clintons?

Mr. HUBBELL. It is my understanding that Mr. Kendall was employed sometime in early November.

Senator SARBARNES. Shortly thereafter?

Mr. HUBBELL. Shortly thereafter, I met with Mr. Kendall, explained what files I had, and he picked them up.

Senator SARBARNES. Thank you.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Among those files were the files of Mr. Massey which Mr. Massey had photocopied and given to Mr. Foster. Now those files you have indicated you kept in your possession not to deprive the Rose Law Firm of them since the Rose Law Firm had a copy—

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. —but rather to be in a position to respond should the issue arise again as to what work was performed by the Rose Law Firm for Madison Bank in connection with the securities matter?

Mr. HUBBELL. Even a smaller point, what work, or lack thereof, was Mrs. Clinton involved in with regard to the securities work; that was the issue in the campaign.

Mr. BEN-VENISTE. Indeed, the issue being, as Mr. Massey has testified, this was a one-lawyer job, the securities research issue regarding the preferred stock, and he was the lawyer who did it. And Mrs. Clinton supervised him and was responsible to the client as the billing partner?

Mr. HUBBELL. Right.

Mr. BEN-VENISTE. So we have had the testimony about that. We have also had the testimony from Mr. Massey, and everyone else who has looked at the records, that the records were completely innocuous, humdrum legal memoranda and supporting documentation; correct?

Mr. HUBBELL. Correct.

Mr. BEN-VENISTE. The notion that you were carrying them to Washington, as interstate transportation of innocuous legal memoranda, if we could put a name on it, it didn't occur to you that anyone else was being deprived of these memoranda and files by reason of you taking them with you to Washington?

Mr. HUBBELL. The filings were in Little Rock, Arkansas until June, mid-June 1993.

Mr. BEN-VENISTE. Had anyone from the RTC suddenly decided that they had need of these files, if they had asked the Rose Firm, Mr. Massey would have been in a position to supply them?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. There was no indication from Mr. Massey that he was reluctant to do so?

Mr. HUBBELL. I don't know one way or the other. I didn't know that anybody was looking for these three files. They have always been in existence.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Apart from these three files from Mr. Massey, what other firm files did you get from Mr. Foster?

Mr. HUBBELL. From Mr. Foster?

Mr. CHERTOFF. Yes.

Mr. HUBBELL. I don't recall getting any other files at all from Mr. Foster.

Mr. CHERTOFF. Just those Massey files?

Mr. HUBBELL. That's my recollection.

Mr. CHERTOFF. Did you get firm files from Betsey Wright?

Mr. HUBBELL. Firm files from Betsey Wright?

Mr. CHERTOFF. Yes, Rose Law Firm files from Betsey Wright.

Mr. HUBBELL. Not that I know of. But I don't know what you are talking about.

Mr. CHERTOFF. Did you get any Rose Law Firm files from anybody other than Mr. Foster?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Who?

Mr. HUBBELL. Me.

Mr. CHERTOFF. You took some out yourself?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Which ones?

Mr. HUBBELL. I took Mrs. Clinton's files on Southern Development Bank Corp.

Mr. CHERTOFF. Why did you take those?

Mr. HUBBELL. Because an issue had come up in the campaign as to whether her work involved Southern Development Bank Corp., and so those were put with the other files as well.

Mr. CHERTOFF. What was the issue?

Mr. HUBBELL. The issue on Southern Development Bank Corp. was that it was involved in acquisition of a bank, and then making minority loans in rural Arkansas. She served on the board and questions had come up in the campaign about our firm's work and her service on the board.

Mr. CHERTOFF. What were the questions?

Mr. HUBBELL. I don't know what the questions were.

Mr. CHERTOFF. It was obviously a matter of sufficient concern that you removed these files from the firm as well to take with you?

Mr. HUBBELL. It involved a matter that she worked on, and if it came up we would have access to the files.

Mr. CHERTOFF. What were the questions that you——

Mr. HUBBELL. I don't know, Mr. Chertoff. I wasn't involved in the questions.

Mr. CHERTOFF. You said that there were questions which came up about it in the campaign?

Mr. HUBBELL. There were.

Mr. CHERTOFF. What were the questions?

Mr. HUBBELL. Let me think. It was about one of the board's she served on, so I think the question was what did they do and what were her duties. I think it had to do with her involvement, whether she had any involvement in getting any kind of approvals.

Mr. CHERTOFF. What kind of approvals?

Mr. HUBBELL. I don't know if it came up or not; whether the State Banking Department approved Southern Development Bank Corp. or not, that was one.

Mr. CHERTOFF. So one issue was whether she had been involved in getting some approvals from the State Bank Department for this other institution?

Mr. HUBBELL. Right, right.

Mr. CHERTOFF. Was there an issue about loans?

Mr. HUBBELL. Loans?

Mr. CHERTOFF. Yes, insider loans.

Mr. HUBBELL. Not that I know of, no.

Mr. CHERTOFF. What besides approvals came up?

Mr. HUBBELL. What she was doing on the board, what she was paid for serving on that board, what the extent of our firm's fees were to that client.

Mr. CHERTOFF. Who was the owner of the bank?

Mr. HUBBELL. South Shore Bank out of Chicago, I believe.

Mr. CHERTOFF. Now, you took those files with you when you came to Washington?

Mr. HUBBELL. They first went to my house in Little Rock and then came to Washington, yes.

Mr. CHERTOFF. Where did they wind up?

Mr. HUBBELL. At Mr. Kendall's.

Mr. CHERTOFF. Did you take any files relating to the Bank of Kingston, later known as Madison Bank & Trust?

Mr. HUBBELL. I did take the Bank of Kingston files out of the firm. They didn't end up in my basement, but they ultimately ended up back with the Special Prosecutor.

Mr. CHERTOFF. First of all, when you took the Bank of Kingston files and the Southern Development Bank Corp. files, did you ask permission from anybody to do that?

Mr. HUBBELL. I don't believe so.

Mr. CHERTOFF. Did you ask for permission when you took the Bank of Kingston filings?

Mr. HUBBELL. Bank of Kingston, no.

Mr. CHERTOFF. So you just took them?

Mr. HUBBELL. I didn't know I had taken the Bank of Kingston files.

Mr. CHERTOFF. What happened to the Bank of Kingston files?

Mr. HUBBELL. The Bank of Kingston issue came up, and I put those files in with my files at the firm. Then, when I was subpoenaed by the Special Prosecutor and was looking through my files, I realized that they had been packed up and put with my files. I delivered them to my counsel, who delivered them to the Special Prosecutor.

Mr. CHERTOFF. So you accidentally took those with you?

Mr. HUBBELL. Yes, I did.

Mr. CHERTOFF. Why did you originally put them in with your own files?

Mr. HUBBELL. They were in my office, in my drawer.

Mr. CHERTOFF. Why were they in your office and in your drawer?

Mr. HUBBELL. Because an issue had come up as to what work the firm had done in connection with the Bank of Kingston.

Mr. CHERTOFF. That was McDougal's bank?

Mr. HUBBELL. Yes, it was.

Mr. CHERTOFF. What was the issue that came up?

Mr. HUBBELL. The same issue, had the firm done any work for Jim McDougal.

Mr. CHERTOFF. And the answer to that is yes?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. They had done work for the Bank of Kingston?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did you know that the Bank of Kingston had also been involved in lending money to Mrs. Clinton in regard to White-water?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. That was not in the files that wound up in your office?

Mr. HUBBELL. No.

Mr. CHERTOFF. So these Bank of Kingston files were packed up with your other files and also wound up in your basement?

Mr. HUBBELL. No, they did not.

Mr. CHERTOFF. Where did they wind up?

Mr. HUBBELL. They wound up in my mini-warehouse in Little Rock.

Mr. CHERTOFF. You have a mini-warehouse in Little Rock?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. What is in that?

Mr. HUBBELL. Nothing now.

Mr. CHERTOFF. When was the last time there was something in the mini-warehouse?

Mr. HUBBELL. I shouldn't say there is nothing in it. There may be some furniture and some clothes.

Mr. CHERTOFF. We are talking about papers, when was the last time there were papers in it?

Mr. HUBBELL. When I was subpoenaed by the Special Prosecutor I got the files out, brought them to Washington, and gave them to my lawyer.

Mr. CHERTOFF. When was that?

Mr. HUBBELL. When did we get those? March, April, May 1994.

Mr. CHERTOFF. So the Bank of Kingston files were in the mini-warehouse, the Southern Development Bank Corp. files wound up in your basement and over with Mr. Kendall?

Mr. HUBBELL. Right.

Mr. CHERTOFF. And in neither case did you ask permission to remove those files from the firm?

Mr. HUBBELL. No.

Mr. CHERTOFF. Did you recently discover more documents, by the way, that are pertinent to Madison or McDougal?

Mr. HUBBELL. Madison or McDougal?

Mr. CHERTOFF. Yes, since September.

Mr. HUBBELL. Not that I know of.

Mr. CHERTOFF. Have you turned over any documents since September to the Independent Counsel?

Mr. HUBBELL. Yes, I have.

Mr. CHERTOFF. Where did you discover those?

Mr. HUBBELL. My lawyer had them. He inadvertently had not turned over those documents in May 1994.

Mr. CHERTOFF. What was the source of those documents, were those basement documents or warehouse documents?

Mr. HUBBELL. Warehouse documents.

Mr. CHERTOFF. Now did you also have some of Mrs. Clinton's time sheets?

Mr. HUBBELL. Those were the documents we are talking about. They had nothing to do with Madison.

Mr. CHERTOFF. They were 1987, 1988 time sheets?

Mr. HUBBELL. They were later in time; I couldn't tell you specifically what they were.

Mr. CHERTOFF. Did they relate to another financial institution?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. Did they relate to work involving First American?

Mr. HUBBELL. I don't know, Mike.

Mr. CHERTOFF. How did you wind up with her time sheets?

Mr. HUBBELL. The same way that I wound up with the Bank of Kingston files. During the campaign, as issues came up, I would go down and get things from her secretary, and some things ended up in my office and were packed up.

Mr. CHERTOFF. And that was accidental?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. I want to—

The CHAIRMAN. These are Mrs. Clinton's time sheets?

Mr. HUBBELL. Some of her time sheets, yes.

The CHAIRMAN. They were from 1987, 1988, 1989?

Mr. HUBBELL. I believe that's correct.

Mr. CHERTOFF. Did you take records relating to a financial institution called First South?

Mr. HUBBELL. First South?

Mr. CHERTOFF. Yes.

Mr. HUBBELL. The only information regarding First South that I may have taken would have been my files relating to First South against the Rose Law Firm—the FSLIC made a claim against the Rose Law Firm, but we settled before a lawsuit was filed.

Mr. CHERTOFF. Did that involve Mrs. Clinton?

Mr. HUBBELL. No, it did not.

Mr. CHERTOFF. I want to read to you from the testimony given by Mr. Clark—you know Ron Clark, he is a partner of the firm?

Mr. HUBBELL. I understand.

Mr. CHERTOFF. I want to read to you from page 164 of the transcript of his testimony.

Mr. HUBBELL. Deposition testimony?

Mr. CHERTOFF. Hearing testimony. I will start at line 5.

Mr. HUBBELL. What page?

Mr. CHERTOFF. At page 164, line 5, Mr. Giuffra asks Mr. Clark:

Question: It was improper for Mr. Foster to have removed these files, correct?

Answer: No.

Question: It would have been improper for him to take them out of the firm?

Answer: Unless he had the client's consent, and I know he didn't.

Question: Would it have been proper if Mr. Hubbell was involved in doing this?

Answer: No.

Do you disagree with that?

Mr. HUBBELL. Do I disagree with what?

Mr. CHERTOFF. That it was improper for you to be involved in removing files relating to work done for Madison without the client's consent?

Mr. HUBBELL. Which files?

Mr. CHERTOFF. The files, the Rose Law Firm files relating to work done for Madison.

Mr. HUBBELL. The three files?

Mr. CHERTOFF. The Massey files.

Mr. HUBBELL. No, I don't believe it was.

Mr. CHERTOFF. You disagree with Mr. Clark?

Mr. HUBBELL. Yes, I do.

Mr. CHERTOFF. You disagree with Mr. Massey on that?

Mr. HUBBELL. Yes, I do.

Mr. CHERTOFF. You agree you did not have the clients' consents?

Mr. HUBBELL. I agree I did not have the client's consents.

Mr. CHERTOFF. You didn't have the firm's consent?

Mr. HUBBELL. I didn't ask the firm.

Mr. CHERTOFF. You took it on without asking?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. I want to ask you about other records. In shorthand I will call the records you received in January, the ones that wound up in your basement and go on to Mr. Kendall, the basement records. First of all, am I correct that in November, when you turned over your basement records to Mr. Kendall, you turned over everything you had that you had collected from the campaign or from the Rose Law Firm?

Mr. HUBBELL. Except my own personal records, yes.

Mr. CHERTOFF. Other than your personal records, you didn't hold anything back?

Mr. HUBBELL. No.

Mr. CHERTOFF. When you received this material in January, you got some of it from Betsey Wright?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Some of it from Vincent Foster?

Mr. HUBBELL. Right.

Mr. CHERTOFF. Some of it you took yourself from the firm?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. What other sources did you have for getting this material?

Mr. HUBBELL. Other people within the firm.

Mr. CHERTOFF. All of that you collected you kept together in one place?

Mr. HUBBELL. At one time, yes.

Mr. CHERTOFF. Because you wanted to maintain its integrity?

Mr. HUBBELL. Right.

Mr. CHERTOFF. You did maintain its integrity?

Mr. HUBBELL. I believe so, yes.

Mr. CHERTOFF. You turned it over to Mr. Kendall?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. We can conclude from that, if we accept that that was the way you proceeded, that if Mr. Kendall did not have the billing records—I am now talking about the billing records, to shift from the Massey records—we can conclude that if Mr. Kendall did not have the billing records from you in November, you were never given those billing records in January?

Mr. HUBBELL. In January?

Mr. CHERTOFF. Yes.

Mr. HUBBELL. I don't believe I was.

Mr. CHERTOFF. So, to do this by process of elimination, in February 1992, you see the billing records, and you in fact make some notations on them; right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. You do not see some of the notations that Mr. Foster makes, he makes them after you have relinquished them to him; right?

Mr. HUBBELL. I believe that is correct. I mean, it is possible that he made them simultaneously, but I don't believe that's the way it worked.

Mr. CHERTOFF. So your last contact with the billing records is when you leave them in the custody of Mr. Foster?

Mr. HUBBELL. The records we are talking about here?

Mr. CHERTOFF. Yes, the billing records, such as DKSX 28935.

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Then you don't see them again, except until this year?

Mr. HUBBELL. These records now?

Mr. CHERTOFF. Yes, these billing records; not the Massey files, the billing records.

The CHAIRMAN. The billing records that we have just come into possession of, Webb, you last saw them in February when you left them with Vince Foster?

Mr. HUBBELL. These records, yes, yes [indicating].

Mr. CHERTOFF. You last saw them in February 1992 and you don't see them again until this year, right now?

Mr. HUBBELL. Right.

Mr. CHERTOFF. The last person you know who had them is Mr. Foster?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. You don't receive them in January from any of the people who were giving you records?

Mr. HUBBELL. I don't believe so.

Mr. CHERTOFF. Mr. Foster didn't give them to you in January?

Mr. HUBBELL. No.

Mr. CHERTOFF. If Mr. Foster had given them to you, they would have been in your basement and you would have turned them over to Mr. Kendall?

Mr. HUBBELL. I believe so, yes.

Mr. CHERTOFF. So, since Mr. Kendall doesn't appear to have received them in November, we can conclude that whatever Mr. Foster gave you, he never gave you these billing records?

Mr. HUBBELL. I believe that's correct.

Mr. CHERTOFF. Where we are with this, then—I think you will agree with me—is that you can take us with these billing records up to the time that Mr. Foster had possession of them in February 1992, and then you don't see them again. They never come to you when everybody is giving you the campaign files and the Rose files to hold together?

Mr. HUBBELL. No.

Mr. CHERTOFF. Was it your understanding, by the way, in talking to Mr. Foster in January 1993, that he was holding back any files from you?

Mr. HUBBELL. I didn't get the impression one way or the other.

Mr. CHERTOFF. What did he tell you he was giving you in January 1993?

Mr. HUBBELL. He told me he was giving me the securities file on Madison.

Mr. CHERTOFF. Did he tell you he was giving you all the files regarding Rose?

Mr. HUBBELL. No.

Mr. CHERTOFF. Given the fact that there are billing records, in that pile of billing records, that relate to this securities work, did he indicate to you that he was holding back any records relative to the securities work?

Mr. HUBBELL. No, he didn't indicate that he was holding anything back.

Mr. CHERTOFF. Did Ms. Wright indicate that she was holding anything back?

Mr. HUBBELL. No. Let me go back. Ms. Wright did tell me there was something, but it has nothing to do with Madison.

Mr. CHERTOFF. That she was holding back?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. On a subject unrelated to—

Mr. HUBBELL. Totally unrelated to Madison.

Mr. CHERTOFF. Unrelated to any financial issue?

Mr. HUBBELL. Unrelated to any financial issue at all.

Mr. CHERTOFF. Other than that, did she tell you she was holding back anything?

Mr. HUBBELL. No.

Mr. CHERTOFF. Did anybody else who gave you documents tell you they were holding back anything?

Mr. HUBBELL. No.

Mr. CHERTOFF. Is it your impression that you were the person who was designated to receive all this material?

Mr. HUBBELL. It was my impression that people knew I was going to assemble those documents.

Mr. CHERTOFF. Did Mr. Foster ever tell you in January—let me withdraw the question.

At any time after February 1992, until his death, did Mr. Foster ever discuss these billing records?

Mr. HUBBELL. The billing records, no.

Mr. CHERTOFF. I see my time is up, Mr. Chairman.

The CHAIRMAN. We're in the process of having a vote and I want to ascertain something so we can arrange the schedule in order to give people an opportunity to take a break.

We are going to take a break until at least 4:30. I've been informed that we have a total of three votes. If it is a total of three votes, and it takes 10 minutes for each of them, that means we would be back no sooner than 4:30. We will try to make it as close to that as we can, but we certainly will stand in recess until at least 4:30 or until the votes are concluded, whichever is earlier.

Senator MOSELEY-BRAUN. Mr. Chairman, I passed on my first round of questioning and now we have to go to these votes, and I don't know that I will be able to come back—

The CHAIRMAN. If you have a question—

Senator MOSELEY-BRAUN. I just have an observation. When I was practicing at the U.S. Attorney's Office back in Chicago, one of my early supervisors really got on me one day because I took a file out of the office, a Government file; it was the U.S. Attorney's Office, after all. I will never forget. He said if you got hit by a bus, this file would be lost. You have no right. You shouldn't take it out. That's sloppy practice. In hindsight, particularly after listening to this witness going on at length about taking files out of the office, I have to think everybody will concede that it may be sloppy practice to take originals out of an office, but, at the same time, the fact is that it really is standard procedure for many lawyers. When people are practicing in the private sector, they take files home at night, they work on them at home. They take them from one file drawer and put them in another file drawer.

These things happen in the ordinary course of doing business, so I didn't want us to leave with the impression that there was something nefarious about moving a file when that was in the normal course.

Maybe it is appropriate to ask Mr. Hubbell, was it your experience that if you wanted to take a file home to look at, or move a file from one location to another, that you would take the original as opposed to Xeroxing the whole thing so that you would only take copies?

Mr. HUBBELL. When I practiced, I took files home almost every night, so it is hard to say. I certainly did that.

Senator MOSELEY-BRAUN. But it was, in your opinion, ordinary practice to do so; is that correct?

Mr. HUBBELL. Yes.

Senator MOSELEY-BRAUN. Thank you. I have nothing further.

The CHAIRMAN. We will be back at 4:30, or at the conclusion of the votes, whichever is earlier.

[Recess.]

The CHAIRMAN. We are going to resume. When Senator Sarbanes comes if he wants to ask questions, he will do so on the next round. Just in an effort to move this process, and not continue it to midnight, we will start.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Hubbell, you had indicated that there were occasions, obviously when you were in practice, that you took files home to work on. Maybe you didn't take files with you while on vacation to work on, but what we are talking about here, to be quite clear, with respect to the Madison files, the Southern Development files, the Bank of Kingston files, the time sheets, these were not taken out in late 1992 or early 1993 in order to work on them at

home, in order to do client work. They were removed to be taken to Washington or to be taken to that mini-warehouse to be stored; is that right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Now when you took the Southern Development files, did you make copies of those?

Mr. HUBBELL. Southern Development, no, I don't believe I did.

Mr. CHERTOFF. So you took the originals out of the firm?

Mr. HUBBELL. Yes, I believe so.

Mr. CHERTOFF. And you left the firm with nothing?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. So the firm's files on Southern Development disappeared?

Mr. HUBBELL. No, they didn't disappear——

Mr. CHERTOFF. I'm sorry. They disappeared from the firm?

Mr. HUBBELL. They are not at the firm.

Mr. CHERTOFF. Did you tell anyone at the firm that you were taking them?

Mr. HUBBELL. I believe Mr. Kennedy knew. He was the lawyer on the file.

Mr. CHERTOFF. You told Mr. Kennedy?

Mr. HUBBELL. I believe, but I am not 100 percent sure.

Mr. CHERTOFF. How did Mr. Kennedy know?

Mr. HUBBELL. Mr. Kennedy was the lawyer for Southern Development Bank Corp.

Mr. CHERTOFF. And he gave you the files?

Mr. HUBBELL. I can't say that, Mike. I can't say I have a specific recollection of going to Bill and saying I believe that the Southern Development files I am talking about were Mrs. Clinton's files as a board member, OK. I don't.

Mr. CHERTOFF. They were Rose Law Firm files?

Mr. HUBBELL. No.

Mr. CHERTOFF. They were not?

Mr. HUBBELL. They were maintained at the Rose Law Firm. I remember there were four boxes. I believe they were Mrs. Clinton's files for the work she had done, and for her service on the board.

Mr. CHERTOFF. Let's put aside the board files. The board files, I guess, would be the property of the company?

Mr. HUBBELL. No, they would be the property of Mrs. Clinton, as a board member.

Mr. CHERTOFF. She wasn't a board member after January 1993, was she?

Mr. HUBBELL. No.

Mr. CHERTOFF. In addition, there was work that the firm did for Southern Development——

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. —that would be Rose Law Firm files?

Mr. HUBBELL. Those would be at the Rose Firm, yes.

Mr. CHERTOFF. They were the files of the Rose Law Firm work?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. So they were Rose Law Firm files; right?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. As to the portion of files in the four boxes, you didn't ask permission from the law firm to take them. We have established that; right?

Mr. HUBBELL. I think I have said that unless Mr. Kennedy knew, no, I did not.

Mr. CHERTOFF. Now, Mr. Kennedy wasn't staying at the Rose Law Firm, either?

Mr. HUBBELL. He was at that time, yes, he was.

Mr. CHERTOFF. When did you remove the files for Southern Development?

Mr. HUBBELL. Early January 1993, at the same time as all the other files.

Mr. CHERTOFF. When did Mr. Kennedy come to Washington?

Mr. HUBBELL. Sometime in February.

Mr. CHERTOFF. When did Mr. Kennedy learn he was coming to Washington?

Mr. HUBBELL. I believe sometime in February, Mr. Chertoff.

Mr. CHERTOFF. Let me ask you this: What was your reason for thinking Mr. Kennedy may have known that you removed Southern Development files from the firm?

Mr. HUBBELL. Because he was a lawyer for Southern Development Bank Corp.

Mr. CHERTOFF. The files you removed were physically in what place?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. Were they in Mrs. Clinton's office?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. Had you asked Mr. Kennedy for those files?

Mr. HUBBELL. I don't remember one way or the other.

Mr. CHERTOFF. In any case, you will agree with me, after February, Mr. Kennedy was not at the law firm?

Mr. HUBBELL. I do agree with you on that.

Mr. CHERTOFF. There is no one else that you have a suspicion or speculation knew you removed those files?

Mr. HUBBELL. I don't know whether they knew or not. I did not tell anybody.

Mr. CHERTOFF. As far as you knew, nobody knew?

Mr. HUBBELL. As far as I knew.

Mr. CHERTOFF. In your state of mind, you were taking the only existing copies of firm files without permission and without the knowledge of the firm?

Mr. HUBBELL. No, I disagree with that, because I don't know whether I told Mr. Kennedy or not.

Mr. CHERTOFF. I want to get back to your state of mind.

Mr. HUBBELL. My state of mind was I was taking the files with me, yes.

Mr. CHERTOFF. You remember taking the only existing copies?

Mr. HUBBELL. Right.

Mr. CHERTOFF. And you don't have any memory of having told anybody about taking them?

Mr. HUBBELL. No.

Mr. CHERTOFF. Or asking permission?

Mr. HUBBELL. No.

Mr. CHERTOFF. Did anybody ever contact you after January, putting aside the Independent Counsel, and ask you questions about those files?

Mr. HUBBELL. No.

Mr. CHERTOFF. Now the Bank of Kingston file that got packed up with your office files, you physically took that and put it in your office?

Mr. HUBBELL. I had put the Bank of Kingston file in my office sometime around February 1992.

Mr. CHERTOFF. Where did you get that from?

Mr. HUBBELL. From the closed files.

Mr. CHERTOFF. At the firm?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did you have anybody make copies of that?

Mr. HUBBELL. No.

Mr. CHERTOFF. So you took the only existing copy and put it in your office?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Why did you put it in your office?

Mr. HUBBELL. Because I was getting phone calls about McDougal and Madison and other issues and I wanted to look at the file.

Mr. CHERTOFF. Were you getting phone calls about the Bank of Kingston?

Mr. HUBBELL. I was getting calls about McDougal and I knew that McDougal had owned the Bank of Kingston.

Mr. CHERTOFF. So you anticipated that, sooner or later, the calls would go in to the Bank of Kingston, or Madison Bank & Trust as it is sometimes known?

Mr. HUBBELL. No. I anticipated that call. I believe the question was whether the firm had represented Jim McDougal personally. That was what was coming to the campaign. I knew that we had done work for the Bank of Kingston, and I wanted to see if Jim McDougal was a party to that lawsuit and be able to answer those questions truthfully.

Mr. CHERTOFF. So, having taken the only existing copy of that from the closed files, and having put it among your files, you then never returned it?

Mr. HUBBELL. No, I did not return it.

Mr. CHERTOFF. And it was packed up among your other files?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Did you ever talk to Mrs. Clinton about that?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. You worked on Madison Bank & Trust?

Mr. HUBBELL. What's that?

Mr. CHERTOFF. Did you ever talk to Mrs. Clinton about the work done on Madison Bank & Trust or the Bank of Kingston?

Mr. HUBBELL. The Bank of Kingston, I don't believe so.

Mr. CHERTOFF. Did you talk to Mr. Foster about it?

Mr. HUBBELL. Yes, I did.

Mr. CHERTOFF. Did Mr. Foster know you had those files in your office?

Mr. HUBBELL. In 1992 I believe he did, yes.

Mr. CHERTOFF. Did Mr. Foster have his own set of files on the Bank of Kingston?

Mr. HUBBELL. I really don't know the answer to that question.

Mr. CHERTOFF. Did you attempt to get files from Mr. Foster relating to the Bank of Kingston?

Mr. HUBBELL. I think I asked for the firm's files on the Bank of Kingston and got a file about as thick as this, Mike. They provided me the information I needed.

Mr. CHERTOFF. Now why did you get Mrs. Clinton's time sheets?

Mr. HUBBELL. Some issue had come up about a representation during that period of time and I can't even remember what it was.

Mr. CHERTOFF. Did it have to do with Mr. Ward?

Mr. HUBBELL. No.

Mr. CHERTOFF. Did it have to do with Dan Lasater?

Mr. HUBBELL. It might have, yes, that might be one reason.

Mr. CHERTOFF. Did it have to do with her representation in a case against a financial institution owned by Dan Lasater?

Mr. HUBBELL. It could have. I just don't know what the issue was.

Mr. CHERTOFF. Why did you get her time sheets?

Mr. HUBBELL. To see if there were time entries where she had worked on files.

Mr. CHERTOFF. On which files?

Mr. HUBBELL. Whatever the issue was.

Mr. CHERTOFF. Where did you get the time sheets from?

Mr. HUBBELL. From her secretary.

Mr. CHERTOFF. Did you also ask for her 1985 and 1986 time sheets relating to Madison?

Mr. HUBBELL. I don't believe so.

Mr. CHERTOFF. Well, here we were in 1992, there were all these issues that evidently you are preparing to answer questions on involving Southern Development and the Bank of Kingston. Clearly, you knew that Madison was going to be an issue, Madison Guaranty was going to be an issue?

Mr. HUBBELL. Right.

Mr. CHERTOFF. You had gone to the trouble of getting her time sheets, Mrs. Clinton's time sheets, for 1987 and 1988; right?

Mr. HUBBELL. Obviously I did because I had them in my possession.

Mr. CHERTOFF. Why didn't you get them for 1985 and 1986?

Mr. HUBBELL. I don't know. I can speculate, but I don't know for sure. I speculate that these computer printouts were sufficient to give me the information I needed.

Mr. CHERTOFF. So you didn't make an effort to obtain her time sheets from 1985 and 1986?

Mr. HUBBELL. Essentially, all the information, Mike, that's contained on the billing memorandum is what's on the time sheets.

Mr. CHERTOFF. But, actually, the billing documents you have in front of you and the ones we have received are not complete. Did you know that?

Mr. HUBBELL. No, I didn't.

Mr. CHERTOFF. Did you know that there is missing certain portions of the backup for the period of September, October, and November, the detail?

Mr. HUBBELL. No, I did not know.

Mr. CHERTOFF. When you looked at the records in 1992, were they complete?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. Do you have a memory in February 1992 when you looked at these billing records of noticing that there were missing pages when compared with the backup of the printouts?

Mr. HUBBELL. No, not one way or the other.

Mr. CHERTOFF. Would you agree with me that if you had noticed there were missing pages you would have gone to the time sheets to fill in the detail; right?

Mr. HUBBELL. If I had been doing that work. I don't know that I was doing that work.

Mr. CHERTOFF. Doing what work? You were reviewing these documents; right?

Mr. HUBBELL. I was reviewing these documents to look for the securities matter.

Mr. CHERTOFF. Right. Now the securities matter was still going on in September and October; right?

Mr. HUBBELL. It could have been, I don't know.

Mr. CHERTOFF. So in order to do what you have told us you set out to do here, it would make sense you would look at all the conceivable pages of printouts——

Mr. HUBBELL. It could be.

Mr. CHERTOFF. —that would show Mrs. Clinton's time?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. And we don't have all of those, even now, as you will see if you inspect your set of billing records.

Mr. HUBBELL. OK.

Mr. CHERTOFF. My question to you is, in February 1992, did you notice there were missing backup pages of detail?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. Is it fair to conclude, then, that there were no missing pages when you looked at it in February——

Mr. HUBBELL. I don't know what is fair to conclude. I know I was focusing on the issue of whether Mrs. Clinton had contact with Ms. Bassett.

Mr. CHERTOFF. And in order to determine that, you would have wanted to look at all the backup that showed her work during the period of the fall of 1985 because you would want to see if there were contacts then; right?

Mr. HUBBELL. Mike, you are assuming that I did this. I don't know that I did.

Mr. CHERTOFF. Is it fair also to say, based on your practice back in 1992, because evidently you were very thorough in, if I may be permitted to use the term, vacuuming the files?

Mr. HUBBELL. I don't appreciate that, Mike. I haven't vacuumed any files.

Mr. CHERTOFF. You withdrew from the firm, correct me if I am wrong, the Madison files that Mr. Massey had, you got those from Mr. Foster, you personally took out the Southern Development files; correct?

Mr. HUBBELL. Correct.

Mr. CHERTOFF. You at least had in your possession at some point the billing records?

Mr. HUBBELL. What billing records?

Mr. CHERTOFF. The ones you have before you.

Mr. HUBBELL. In 1992.

Mr. CHERTOFF. In 1992, that's right. You removed from the firm the Bank of Kingston files and you removed from the firm, by way of putting them in your office and shipping them over to the warehouse, the time sheets?

Mr. HUBBELL. They wound up in the warehouse.

Mr. CHERTOFF. They wound up in the warehouse?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. My question to you is, do you remember in 1992 going back and looking at Mrs. Clinton's 1985 and 1986 time sheets in order to supply missing detail about the work she had done in 1985 relating to Madison?

Mr. HUBBELL. The answer is no, I don't remember that.

Mr. CHERTOFF. You don't have any recollection of inquiring after those time sheets?

Mr. HUBBELL. No, I do not.

Mr. CHERTOFF. I want to go back to this question of whether you understood the original IDC purchase as a sham deal.

You knew, Mr. Hubbell, from Mr. Ward shortly after that purchase was made, that Mr. Ward was holding part of the property in his name until it could be sold, because there was a limit on the amount of property Madison could hold in its own name; right?

Mr. HUBBELL. That's what I was told, yes.

Mr. CHERTOFF. As of 1985, how many years had you been in the practice of law?

Mr. HUBBELL. Twelve.

Mr. CHERTOFF. You had been Chief Justice of the Supreme Court of Arkansas?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. What were your specialty in practice? Litigation?

Mr. HUBBELL. Litigation.

Mr. CHERTOFF. Did you ever represent banks?

Mr. HUBBELL. I represented banks.

Mr. CHERTOFF. Did you ever represent regulated institutions?

Mr. HUBBELL. Banks.

Mr. CHERTOFF. Other than banks?

Mr. HUBBELL. Insurance companies.

Mr. CHERTOFF. You understand there are sometimes restrictions placed on the amount of certain types of investments that can be made for any one of a number of good reasons that involve protecting the welfare of taxpayers or policyholders, or whatever it is?

Mr. HUBBELL. I do understand regulations imposed on regulated entities.

Mr. CHERTOFF. You understand that one of the ways people try to circumvent or evade these restrictions is by having a nominee hold some or all of the property; right?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Sometimes that's called warehousing?

Mr. HUBBELL. I understand the concepts of warehousing.

Mr. CHERTOFF. Now, I gather Mr. Ward looked to you, as a family member, to give him advice and to talk to about deals; right?

Mr. HUBBELL. He talked to me a lot about deals, yes.

Mr. CHERTOFF. You couldn't stop him basically?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Here you see a situation where Mr. Ward says to you that he is going to basically be holding a piece of property until it can be sold, and you understand, either from him or from somewhere else, that the reason for that is because Madison had a limit on what it could own in its own name.

Did that cause a red flag to go up for you?

Mr. HUBBELL. I was concerned if, for example, they couldn't sell the property, what would happen to his personal assets, yes.

Mr. CHERTOFF. How did you satisfy your concern?

Mr. HUBBELL. He told me it was a nonrecourse loan.

Mr. CHERTOFF. Did he tell you who was giving him the non-recourse loan?

Mr. HUBBELL. Yes, Madison.

Mr. CHERTOFF. Madison Guaranty?

Mr. HUBBELL. Yes.

The CHAIRMAN. The red light is on and because the Minority has been very, very patient, and in order to move this, we started, I am going to ask at this time, Senator Sarbanes, if you have any questions?

Senator SARBANES. I do have some.

Mr. Hubbell, I listened as Mr. Chertoff was enumerating files which he said you removed or took from the Rose Law Firm?

Mr. HUBBELL. That's correct.

Senator SARBANES. As he enumerated that list, he mentioned the billing records, but I didn't understand any testimony here today to indicate that you took the billing records from the Rose Law Firm; is that—

Mr. HUBBELL. I thought I corrected Mr. Chertoff. To my knowledge, I took no billing records from the firm.

Senator SARBANES. So those billings records that are there, you didn't take those from the firm?

Mr. HUBBELL. These, I did not.

Senator SARBANES. I was also interested in this line of questioning about these various files. I take it these files, Southern Development Bank Corp. for example, were turned over by you to the Independent Counsel?

Mr. HUBBELL. No, they were turned over to Mr. Kendall.

Senator SARBANES. Which files did you turn over to the Independent Counsel?

Mr. HUBBELL. The Bank of Kingston file and Mrs. Clinton's time records.

Senator SARBANES. This is the first I have heard of them. When was that done?

Mr. HUBBELL. The Bank of Kingston file was turned over in connection with the subpoena by Mr. Fiske. The time records were not turned over until later because of inadvertence of communication between my counsel and the Special Counsel, but they have been turned over now.

Senator SARBANES. So both of those have been in the hands of the Independent Counsel; is that right?

Mr. HUBBELL. They are now there, right.

Senator SARBANES. And no one else?

Mr. HUBBELL. No one else that I know of.

I'm sorry, the Rose Firm and Mr. Kendall probably got a copy of the time sheets.

Mr. KRAVITZ. Just so I am clear, are you referring to the time sheets of Mrs. Clinton's from the 1987 to 1989 time period?

Mr. HUBBELL. Yes.

Mr. KRAVITZ. I think I can shed some light on that. Actually, during the deposition of Ronald Clark, the current managing partner at the Rose Law Firm, on January 5, 1996, the subject of Mrs. Clinton's time sheets from that time period, 1987 to 1989, which were in your possession, came up.

Alden Atkins, the attorney representing Mr. Clark at the deposition, actually the attorney for the Rose Law Firm, stated that he had been shown all of those time sheets by Mr. Nields, your lawyer, and that he had reviewed those time sheets and that none of them was in any way responsive to the Senate Committee's inquiry, and certainly had nothing to do with Madison Guaranty.

Mr. HUBBELL. That's my understanding.

Mr. KRAVITZ. That's consistent with your understanding?

Mr. HUBBELL. That's my understanding.

Mr. KRAVITZ. Now, Mr. Hubbell, let me just ask you one more question on the subject of all these files and records that you took with you when you left the Rose Law Firm in early 1993.

You have been asked a lot of questions implying there was something nefarious or improper about that. What was your purpose in taking those files and papers with you when you moved to Washington?

Mr. HUBBELL. Let me separate the two out. With regard to the Bank of Kingston files and Mrs. Clinton's time sheets, I did not know I had them. Once I realized I had them, I turned them over to counsel.

With regard to the much greater volume of files, which are Betsey Wright files, the firm files, which is not a great volume, those three files, and the others, it was——

Mr. KRAVITZ. But this group you are talking about now would include the three files of Mr. Massey's relating to Madison Guaranty and also the Southern Development Bank Corp. files?

Mr. HUBBELL. Right. Those files. Issues had come up during the campaign, and we were all leaving Arkansas and coming to Washington. If those issues came up, I wanted whoever was representing the Clintons to be able to go to the files and be able to defend the Clintons like they had in the campaign.

Senator SARBANES. Issues were coming up all the time during the campaign, weren't they? A lot of allegations were being raised, weren't they——

Mr. HUBBELL. Right.

Senator SARBANES. —about Mrs. Clinton's practice and so forth, was that the case?

Mr. HUBBELL. Yes.

Senator SARBANES. What kind of time pressures were you under to try to respond to those queries?

Mr. HUBBELL. Usually, we would get a call and I had to respond that day.

Senator SARBANES. That day?

Mr. HUBBELL. That day.

Senator SARBANES. A call from the press?

Mr. HUBBELL. What would happen is I would get the call from the press and I would alert the campaign or the campaign would call me and say they had received a query from the press, and we would be under pressure to respond that day to questions.

Senator SARBANES. These inquiries would be about one or another of the allegations that were being made; is that right?

Mr. HUBBELL. Absolutely. I mean, there were all kinds of allegations being made, yes.

Mr. KRAVITZ. And these materials that you had collected during the campaign were materials that were used to rebut, where appropriate, those allegations; is that correct?

Mr. HUBBELL. That's correct.

Mr. KRAVITZ. Is it the case that the reason you decided to bring these materials with you to Washington was that you wanted to have those materials available in the event that these same allegations were made again, after the time that Bill Clinton became President?

Mr. HUBBELL. Yes, primarily a lot of us were coming to Washington, and very few people were staying back home, so we wanted to have the records close at hand.

Mr. KRAVITZ. Did you destroy any of these materials?

Mr. HUBBELL. No, I believe the Committee or the Special Prosecutor has everything we have been talking about all day long.

Mr. KRAVITZ. Of course, Mr. Massey has testified that his three files relating to the securities matter with Madison Guaranty Savings & Loan Association, when they got back to him through Mr. Kendall, were complete. I take it that's consistent with your understanding?

Mr. HUBBELL. Yes.

Mr. KRAVITZ. Just so we are clear, was your decision to remove these files from the Rose Law Firm, did that have anything to do with any decision to vacuum anything?

Mr. HUBBELL. No, "vacuum," to me, means disappear and they are all still here.

Mr. KRAVITZ. Just one other point. Right before Mr. Chertoff passed the questioning over to our side a few minutes ago, he was asking you some questions about what you knew about the details of the initial purchase of the IDC property back in 1985. I think it's helpful to read from the Pillsbury Madison report from December 1995 at the point where Pillsbury Madison & Sutro address that very issue.

On page 75 of that report, Pillsbury writes as follows:

If Hubbell had knowledge at a relevant time, it is possible that this knowledge might be imputed to the Rose Law Firm. As a matter of partnership law, that may happen if the partner who knows something but is not acting in the particular manner 'reasonably could and should have communicated it to the acting partner.' Even so, it is unclear that the imputation of Hubbell's knowledge to the firm would mean that otherwise-innocent acts performed by other lawyers in the firm, who lacked actual knowledge of these matters, would somehow become 'fraud' or 'intentional misconduct' within the meaning of the statute of limitations extender.

Now that's what Pillsbury Madison wrote on the subject of your possible knowledge of the details of that initial purchase.

Mr. Thrash, who was here last week, and he testified that he handled the closing on behalf of Madison for that initial purchase, testified that he had no information, as of the time of the closing in early October 1985, that Mr. Ward had a nonrecourse loan and that Mr. Ward, therefore, bore no financial risk in this purchase.

Is your memory consistent with that? By that, I mean, do you remember not saying anything to Mr. Thrash at the time of the closing?

Mr. HUBBELL. I think I had testified, to the best of my memory, I learned that, as opposed to Madison taking it all, that there was this division after the closing.

Mr. KRAVITZ. You didn't know about it before the closing either?

Mr. HUBBELL. No, no.

Mr. KRAVITZ. So it follows you certainly could not have told Mr. Thrash before the closing that Mr. Ward had a nonrecourse loan?

Mr. HUBBELL. No.

Mr. KRAVITZ. Thank you, Mr. Chairman.

The CHAIRMAN. Let me ask you something. You had a good relationship with your father-in-law at this time; right?

Mr. HUBBELL. In 1985 and 1986?

The CHAIRMAN. Yes.

Mr. HUBBELL. Yes.

The CHAIRMAN. He would hang around at the office once in a while?

Mr. HUBBELL. Quite often.

The CHAIRMAN. In your office?

Mr. HUBBELL. Yes.

The CHAIRMAN. Did you have the kind of relationship that he could even call upon your secretary at times to type up something that he might want prepared?

Mr. HUBBELL. Yes.

The CHAIRMAN. Right. He is your wife's daddy?

Mr. HUBBELL. That's right.

The CHAIRMAN. So now he is going to go into this purchase, which is pretty significant, over \$1 million; right?

Mr. HUBBELL. Yes.

The CHAIRMAN. The law firm represents him?

Mr. HUBBELL. That's correct.

The CHAIRMAN. He spoke to you about this purchase, didn't he?

Mr. HUBBELL. Yes, him and I had talked about it before. He talked about himself buying it, yes.

The CHAIRMAN. He talked about himself buying it?

Mr. HUBBELL. Yes.

The CHAIRMAN. So he really talked to you before he went to the closing?

Mr. HUBBELL. Yes, I knew he was buying—

The CHAIRMAN. He had to do title searches?

Mr. HUBBELL. Yes.

The CHAIRMAN. I learned some new phrase about whether or not there is a prohibition—what do they call that? Bill of assurance. You had to find out if there were bills of assurance prohibiting the various uses; right?

Mr. HUBBELL. I am familiar with bills of assurance. In this case, we did not have to find out if there were bills of assurance, but that's one of the things a title search would reveal.

The CHAIRMAN. Even though a rather successful entrepreneur, this was a substantial undertaking for him; right?

Mr. HUBBELL. Yes.

The CHAIRMAN. When he told you about it, you expressed some concern. You indicated something. What did you say to him?

Mr. HUBBELL. Senator, I can't remember the specifics, but this was not conversation.

The CHAIRMAN. Sure.

Mr. HUBBELL. You did not meet over at Mr. Ward's house without business coming up.

The CHAIRMAN. You were talking about all kinds of things?

Mr. HUBBELL. Right.

The CHAIRMAN. Family things, personal things, business, and so forth?

Mr. HUBBELL. Business.

The CHAIRMAN. It wasn't just business. He fell out of the window, he was at your house doing something; right?

Mr. HUBBELL. That was in 1988, Senator.

The CHAIRMAN. But what was he there doing?

Mr. HUBBELL. He was fixing a pipe.

The CHAIRMAN. Your father-in-law was over at the house fixing a pipe?

Mr. HUBBELL. Yes.

The CHAIRMAN. You had a good relationship with him, he used to hang out in your office once in a while?

Mr. HUBBELL. I am not denying that.

The CHAIRMAN. I am not putting words in your mouth, am I?

Mr. HUBBELL. No.

The CHAIRMAN. I am trying to get the picture. Everybody asks, what are you doing? I am trying to get a picture. It is excruciatingly painful at times. Now try to help me.

At some point in time, you came to know he was going to buy this property?

Mr. HUBBELL. He personally was going to buy it, yes, I did.

The CHAIRMAN. Yes, and you said before, I think to Mr. Chertoff, that you did evidence some concern about whether he could pay it back; right?

Mr. HUBBELL. I was concerned that he was making a major purchase, and that there had been a previous owner who couldn't sell it. I wanted to make sure that he wasn't going to end up owing \$1 million and having no way to pay it back.

The CHAIRMAN. What did daddy say?

Mr. HUBBELL. He said it was a nonrecourse loan.

The CHAIRMAN. Which meant what?

Mr. HUBBELL. That the repayment of the debt was secured by the real estate, and that if he chose not to repay the loan, he had to deed the property back. But if he wanted to, he could pay it back, if and when the loan came due.

The CHAIRMAN. If and when the loan came due, if he chose not to make payments or if he was unable to make payments, through some circumstances, he did not have to be able to pay?

Mr. HUBBELL. He had no personal liability on the debt.

The CHAIRMAN. Which meant that the bank couldn't sue him personally?

Mr. HUBBELL. That's correct.

The CHAIRMAN. So that was a pretty good deal?

Mr. HUBBELL. Yes. If——

The CHAIRMAN. If the bank couldn't sue him personally and he bought this property; right?

Mr. HUBBELL. Right.

The CHAIRMAN. He paid \$10 million for it, he has no exposure?

Mr. HUBBELL. Well, he has exposure to his reputation and credit, Senator, but that's not \$10 million worth.

The CHAIRMAN. Now did there come a time that you talked about other parts of this?

Mr. HUBBELL. I don't know if it was before or after, but certainly we talked about it, yes.

The CHAIRMAN. Sure. You talked about how much money he was going to put down; right? You don't buy a piece of property for \$1.15 million without putting something down; right? Did he have to put something down?

Mr. HUBBELL. I never knew that he was buying it personally for sure until he told me he had done it. But I did find out he put nothing down, in one sense. There is another sense——

The CHAIRMAN. Let me ask you something. This is before he bought this, you spoke to him; right?

Mr. HUBBELL. I spoke on many occasions, yes.

The CHAIRMAN. OK. But, before he went to the closing, you spoke to him because this was a tough piece of property, after all, as you said, other people had purchased it that weren't able to develop it, and this was a substantial amount, over \$1 million, and this is your father-in-law, this is family, close?

Mr. HUBBELL. Right.

The CHAIRMAN. So you said listen, what happens if you can't turn this around, you can't sell it; right? That would be a reasonable question.

Mr. HUBBELL. I said that after the case.

The CHAIRMAN. Oh, after the case?

Mr. HUBBELL. Yes.

The CHAIRMAN. You mean to tell us you didn't discuss this at all with him prior to his closing this, purchasing this?

Mr. HUBBELL. No, I didn't say that. I didn't discuss his personally buying it until afterwards.

May I go back and put it in context?

The CHAIRMAN. Yes, please.

Mr. HUBBELL. He located the piece of property. He told me that he had talked to McDougal about it, that McDougal thought it was too big at first because the asking price was \$5 million or more, and that ultimately he got the buyers to agree to sell it at \$1,750,000. There were discussions about whether he would buy it. He said you know, if McDougal doesn't take this, I might take it myself.

But my understanding prior to closing was that Madison was going to buy it all, so I didn't have any discussions about him being about to incur \$1 million worth of debt until afterwards.

The CHAIRMAN. So you are saying what happened is that he actually went through with this purchase. Mr. Thrash was at the firm. Mr. Thrash was an associate or a partner?

Mr. HUBBELL. Partner.

The CHAIRMAN. A partner. He represented the bank and Seth Ward, your father-in-law?

Mr. HUBBELL. Right.

The CHAIRMAN. You didn't know about the terms of how your father-in-law was going to buy this property?

Mr. HUBBELL. I knew afterwards, yes.

The CHAIRMAN. Well, I am trying to get this out. So you are saying that—

Mr. HUBBELL. He told me Madison was going to take it.

The CHAIRMAN. Yes. So you are saying that when your law firm went to the closing, representing him, nobody there told you that your father-in-law was going to buy this, Mr. Thrash never spoke to you?

Mr. HUBBELL. No, Mr. Thrash didn't tell me prior to the acquisition that the deal had changed and my father-in-law was going to take a part of it; no, he did not.

The CHAIRMAN. That seems to me to be a little unusual.

Mr. HUBBELL. It was unusual to me, too. I was surprised to hear that he had taken part of it. I am not disputing that, no.

The CHAIRMAN. No, you weren't surprised to hear he took part of it. And you knew at a certain point he was thinking of taking all of it?

Mr. HUBBELL. I did, but then I was told that Madison was going to do the deal.

The CHAIRMAN. But at one point in time he told you that he was thinking of buying all of it; isn't that true?

Mr. HUBBELL. Right, if Madison wasn't going to buy it.

The CHAIRMAN. Yes. What did you say to him then?

Mr. HUBBELL. I said can you do that.

The CHAIRMAN. What did he say?

Mr. HUBBELL. He said I think it will ultimately make me several million dollars.

The CHAIRMAN. Was that even without having the benefit of a nonrecourse loan?

Mr. HUBBELL. I don't recall hearing about a nonrecourse loan until after the closing.

The CHAIRMAN. Let me go to something else. I would just like to touch on this with you. I have never heard of this Southern Development, which is referred to in these files, heretofore. Now this was a bank?

Mr. HUBBELL. It was a holding company, I believe.

The CHAIRMAN. That owned a bank?

Mr. HUBBELL. That bought a bank, yes.

The CHAIRMAN. Bought a bank?

Mr. HUBBELL. Yes.

The CHAIRMAN. A big bank?

Mr. HUBBELL. No.

The CHAIRMAN. How big?

Mr. HUBBELL. A small bank in rural Arkansas.

The CHAIRMAN. What was the name of the bank?

Mr. HUBBELL. I cannot tell you. There is something in my mind that it could be Elk City, but I may be totally wrong. It was a small rural bank. The purpose of the Southern Development Bank Corp., I believe, is a large holding corporation in Chicago. I believe it was interested in making minority and rural-type loans.

It formed what is called Southern Development Bank Corporation, and it wanted to buy a bank to make small loans in rural Arkansas. So they bought a bank. Now what the name of that bank was, I don't know.

The CHAIRMAN. What did your law firm do in connection with this? Did they represent Southern Development, the holding corporation, in the purchase of this bank?

Mr. HUBBELL. I believe we did.

The CHAIRMAN. Who did they buy the bank from?

Mr. HUBBELL. I don't know.

The CHAIRMAN. Who handled this matter?

Mr. HUBBELL. Mr. Kennedy, I believe.

The CHAIRMAN. He handled this?

Mr. HUBBELL. Mr. Kennedy, yes. I believe so.

The CHAIRMAN. There came a point in time when you moved the files of Southern Development to your office?

Mr. HUBBELL. Yes, initially.

The CHAIRMAN. When was that?

Mr. HUBBELL. In January.

The CHAIRMAN. January of what year?

Mr. HUBBELL. I may be wrong there, Senator. I have to go back. If the issue came up in the campaign, I might have gone and gotten the files.

The CHAIRMAN. Did the Southern Development issue come up during the campaign?

Mr. HUBBELL. I don't know.

The CHAIRMAN. Let's think about this again, if you will. Just take your time.

You didn't work on Southern Development, did you?

Mr. HUBBELL. No, I did not.

The CHAIRMAN. At some point in time, you brought these files into your office at the Rose Law Firm?

Mr. HUBBELL. Correct.

The CHAIRMAN. That's right?

Mr. HUBBELL. Correct.

The CHAIRMAN. Then, you are saying to the Committee, when you left, you took these files with you?

Mr. HUBBELL. Right.

The CHAIRMAN. And were you aware that you took these files with you?

Mr. HUBBELL. The Southern Development files, yes.

The CHAIRMAN. OK. That's good. Now do you remember when you brought these files into your office?

Mr. HUBBELL. No, Senator, because I would have done some research on it during the campaign, whether the issue came up or not, but I don't know that I actually brought the files into my office. I may have gone to Mr. Kennedy's office or Mrs. Clinton's office and looked them up at that point.

At some point when I was leaving, I know that they came into my office. I'm trying to be totally accurate. I just don't know when they physically came into my office.

The CHAIRMAN. I understand that, but let me ask you this: Why would you have done research on this question if it didn't come up during the campaign?

Mr. HUBBELL. We tried to predict issues that might come up during the campaign.

The CHAIRMAN. Who was trying to predict issues that might come up during the campaign?

Mr. HUBBELL. The campaign, the people who were working on the campaign.

The CHAIRMAN. You mean, they said——

Mr. HUBBELL. And people at the Rose Firm who knew that issues might come up.

The CHAIRMAN. Let me ask you, if you took the Southern Development file into your office to predict what issues might come up during the campaign, what particular issue was it that you thought might be of some concern so that you did take it into your office? What issue would that have been?

Mr. HUBBELL. We looked at every board that Mrs. Clinton served on.

The CHAIRMAN. She served on the board?

Mr. HUBBELL. Yes.

The CHAIRMAN. Which board was that?

Mr. HUBBELL. Southern Development Bank Corporation.

The CHAIRMAN. Was that prior to its acquisition of this bank? Was it on the holding corporation?

Mr. HUBBELL. I really couldn't tell you now with accuracy.

The CHAIRMAN. The little light is on up there, and I know there are questions that other people have, so let me just ask you this: Forgetting about the Bank of Kingston files and the time sheets, just concentrating on this Southern Development issue, there came a point in time when you took these files, in conjunction with others, and you sent them where?

Mr. HUBBELL. To my home.

The CHAIRMAN. To your home. Then what did you do with them?

Mr. HUBBELL. In June, I brought them to Washington.

The CHAIRMAN. You brought them to Washington. These are the files that you brought to Washington that were in your basement?

Mr. HUBBELL. In Washington, yes.

The CHAIRMAN. What then happened with the Southern Development files? At some point in time they were transferred to where?

Mr. HUBBELL. When Mr. Kendall came to pick up the files, I delivered them to Mr. Kendall.

The CHAIRMAN. I see. Now did you turn over everything to Mr. Kendall; in other words, all of the campaign files as well?

Mr. HUBBELL. All of the files I had received from Ms. Wright, yes.

The CHAIRMAN. I want to get this straight. You sent all of these over. You sent over the Southern Development files, they were there. Everything that you had, you gave to him; is that correct?

Mr. HUBBELL. Not everything I had. I had some personal files.

The CHAIRMAN. Aside from your personal files, as it related to files that came out of the Rose Law Firm, did you give him everything that you had?

Mr. HUBBELL. Yes.

The CHAIRMAN. OK. You gave all of those to Mr. Kendall?

Mr. HUBBELL. Yes.

The CHAIRMAN. The Bank of Kingston files?

Mr. HUBBELL. No, I think I said the Bank of Kingston files—yes, I thought you said excluding the Bank of Kingston files.

The CHAIRMAN. Let me ask you about the Bank of Kingston files. Those you inadvertently, I think you testified, took out of your office because they were just there. You had been working on them in conjunction with the campaign to look at anything which might have come up. You took them home and eventually they wound up in your basement?

Mr. HUBBELL. No. Those ended up in a warehouse in Little Rock.

The CHAIRMAN. Where are they now?

Mr. HUBBELL. With the Special Prosecutor.

The CHAIRMAN. How did that happen?

Mr. HUBBELL. When I was subpoenaed in March or April, I gave them to my lawyer who delivered them to the Special Prosecutor.

The CHAIRMAN. OK. Those went to the Special Counsel. My time is up, but I would like to ask you some other questions. Senator Sarbanes, I want to thank you for being so patient.

Senator SARBANES. Mr. Hubbell, why don't you, to try to get some perspective on this, tell us a bit about these allegations during the campaign period that apparently required all of you to be either anticipating or responding to various questions being raised, I take it, with respect to Mrs. Clinton's legal work or her general work?

Mr. HUBBELL. Just about everything that involved Mrs. Clinton. Most of the issues came up in prior State campaigns, so you could predict some of them. But there was almost a daily inquiry that we would get from the campaign about, for example, issues involving bond fees that the firm had received. There were all kinds of allegations that would come almost on a daily basis.

Senator SARBANES. Was there an organized campaign you saw in raising these allegations about Mrs. Clinton?

Mr. HUBBELL. Did I think there was an organized campaign?

Senator SARBANES. Yes.

Mr. HUBBELL. I think there was a lot of people looking at everything and anything Mr. or Mrs. Clinton ever had done in their lives and they were raising questions about them. As it related to her work at the law firm, everything was open, fair game, so we tried to predict what kinds of questions might be asked. Primarily, it was based on prior campaigns.

Senator SARBANES. When these questions came up, I take it the response to them was required immediately or virtually immediately; is that—

Mr. HUBBELL. For example, you might get a call at noon, and they may inform you that they are on a 5:00 p.m. deadline. Now, we may have to say we will get back to them, but it helps if you can give them an answer. So there was a lot of preliminary work done in anticipation of issues that might come up.

Senator SARBANES. All right.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. But, of course, in 1993, in January when you took the records to Washington, the campaign was over; right?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. By the way—

Senator SARBANES. The political campaign was over, but the other campaign may still have been going on.

Mr. HUBBELL. I think it still is.

Mr. CHERTOFF. In January 1993, were you anticipating these questions rising up again?

Mr. HUBBELL. I had no idea.

Mr. CHERTOFF. Now, you answered a question of Mr. Kravitz about the 1987 and later time sheets, about whether you have an understanding that those are not responsive to the Committee's request for documents?

Mr. HUBBELL. I have no idea what the Committee's request for documents is. To me?

Mr. CHERTOFF. Or to anyone?

Mr. HUBBELL. I don't know what the Committee is requesting.

Mr. CHERTOFF. You don't remember what's in the time sheets?

Mr. HUBBELL. I don't know what's in the time sheets, what she did from 1987 to 1988.

Mr. CHERTOFF. You are not in a position to say, one way or the other, whether those time sheets are responsive to requests; right?

Mr. HUBBELL. No, I am not. I don't think I tried to do that. I think Mr. Kravitz was saying that Mr. Clark had said they were not responsive to the Committee's request.

Mr. KRAVITZ. Actually, it was Mr. Atkins, the attorney for Mr. Clark.

Mr. HUBBELL. I am not trying to say one way or the other.

Mr. CHERTOFF. You shouldn't take responsibility for things someone else is saying. I want to go back to your understanding of what Mr. Ward's deal was in October 1985 concerning this purchase of the property. I think we established that, at least shortly after the closing, you understood there was a nonrecourse loan to him from Madison Guaranty Savings & Loan, and that he was holding part of the property for Madison Financial; is that correct?

Mr. HUBBELL. That's part of the deal, yes.

Mr. CHERTOFF. You understood Madison Financial was a subsidiary of Madison Guaranty?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. You understood when they were talking about some kind of a limit of the property that could be held by Madison, that that was relating to a savings and loan limitation in terms of the amount of the investment that the savings and loan could make; right?

Mr. HUBBELL. The savings and loan or its subsidiary. I was not—

Mr. CHERTOFF. Mr. Ward also told you about the fact that Madison had an option to buy the property?

Mr. HUBBELL. My understanding is it was initially put in terms that, as it was sold off, Madison would get the proceeds.

Mr. CHERTOFF. So you understood, at least shortly after the closing, the deal was structured so that Mr. Ward didn't put up any money, the financing for the money came from Madison; he was holding the property on behalf of Madison; he had no personal liability to Madison if he didn't pay the loan back; and as the property was sold, Madison would get the proceeds; that's it in a nutshell?

Mr. HUBBELL. The one issue that has not been discussed is that, at the time of the sale, Mr. Ward normally would have received a commission of \$175,000. He deferred that and was going to get a commission as the property was sold.

Mr. CHERTOFF. So for his participation in this arrangement, he would get a commission?

Mr. HUBBELL. He was to get a commission as the property was sold as opposed to when it was bought at that time, yes.

Mr. CHERTOFF. You have knowledge that he had no personal risk in the transaction, he was holding it in his name to accommodate a regulatory issue for the bank, that Madison was going to get the proceeds of any sales, then Madison was financing his share of the deal, and you knew all that shortly after the deal closed?

Mr. HUBBELL. I knew that, yes.

Mr. CHERTOFF. With your experience, having done bank work, you didn't see that this was an obvious effort to evade a regulatory restriction upon the bank's investment?

Mr. HUBBELL. I have never represented an S&L. I don't know whether it was illegal or not.

Mr. CHERTOFF. Without getting technical about it being an S&L, just referring to the characteristics of the transaction, which is one in which there is no economic risk; Mr. Ward doesn't put his assets at risk and he doesn't get the benefit of the deal, all he gets is his fixed commission; isn't that a classic nominee or warehousing or parking transaction?

Mr. HUBBELL. I think of parking and warehousing a little bit differently, Mike, but—

Mr. CHERTOFF. Forget the terminology. Isn't it classic?

The CHAIRMAN. Mr. Hubbell, you are a former Supreme Court Judge, Associate Attorney General, you were well known and well regarded in the legal community. Your father-in-law had informed you about this and you didn't know prior, but thereafter, you learned shortly thereafter because the terms were changed a little bit, you knew that he had been used to park this land he didn't have any money in and he told you he had a nonrecourse loan; isn't that a fact?

Mr. HUBBELL. He had a nonrecourse loan, he absolutely did.

The CHAIRMAN. And you didn't know that McDougal was using him to park the land?

Mr. HUBBELL. Senator, I knew that he was the owner but that McDougal could sell it and they would—

The CHAIRMAN. Exercise an option any time he wanted. They had 270 days to take it back; isn't that true?

Mr. HUBBELL. Yes.

The CHAIRMAN. You knew that. Let me tell you why I feel you and your partners were reluctant in this. This was 4 days. I think the firm was absolutely concerned and I think some of your people were concerned with the legal liabilities they might incur in terms

of knowing and representing both the bank and Seth Ward in a transaction which the Federal regulators have said was a sham transaction because then you have liability there. Isn't that true?

Mr. HUBBELL. If the regulators said——

The CHAIRMAN. If the Rose Law Firm was aware of what I've outlined to you, that Seth Ward was used to park this land, then they would have potential liability. Eventually this whole thing wound up costing the taxpayers millions of dollars, so there is a real potential for liability; isn't that true?

Mr. HUBBELL. Senator, I don't want to argue with you——

The CHAIRMAN. We are not going to argue, but let me tell you something.

Mr. HUBBELL. Let me finish.

The CHAIRMAN. Go ahead.

Mr. HUBBELL. I have read the report which says there isn't liability, so I don't know that there is liability.

The CHAIRMAN. Let me just stop you there. Later, you can go back and I will give you all the time you want.

That report was written without the benefit of the information that this Committee now has. Those who made the report did not have the information as it relates to the hours, as it relates to the work, as it relates to the knowledge of some of the partners, including yourself.

The fact of the matter is that there came a point in time that you learned about this, you say shortly thereafter. What obligation do you have as it relates to that kind of situation where you represent both Madison and Seth Ward? That's number one.

Number two, you had a partner who was there who participated. He would have us think he was the proverbial potted plant. That was Mr. Thrash, he didn't do anything.

Now, I have to tell you it is not unreasonable for people to conclude that one of the reasons that we have this great gap and that we can't say this is the first time is because, after the regulators clearly spell it out, and after you see a pattern of parking of properties, this isn't the first time, this is repeatedly. McDougal had used this as a device over and over again with at least four or five different people working in the bank who had positions somewhat similar, analogous to your father-in-law.

Do you mean to tell me that the law firm was not concerned? You didn't come to be concerned about potential liabilities if it were known that the law firm was aware; if indeed the law firm was aware of the situation, that you weren't concerned about potential liability?

Senator SARBANES. Are we talking about the initial purchase from IDC?

The CHAIRMAN. Of course, the initial purchase. The one that Seth Ward made, and thereafter, the other transactions that took place.

Senator SARBANES. Well, the regulators themselves have said that the——

The CHAIRMAN. Senator, you can raise that. The regulators were not aware and did not have this information, nor did they say that they had no liability. As a matter of fact, they are clearly reviewing this right now.

Mr. Hubbell, I am asking you, do you mean to tell me there didn't come a point in time that you weren't concerned about potential liability?

Mr. HUBBELL. At what time? That's the point. I was not concerned back in 1985.

The CHAIRMAN. But in 1992 and 1993 you were concerned?

Mr. HUBBELL. No, I wasn't in 1992. I wasn't, Senator. There had been a lawsuit about the property by that time.

The CHAIRMAN. Let me tell you, this is the initial report by the Federal Home Loan Bank Board that goes back to May 8, 1986. It states:

Ward apparently warehoused this land to reduce Madison Financial's investment, and the attendant borrowing from Madison. In this way, limitation to Madison's investments in its service corporation are avoided. In fact, \$100,000 of Ward's remaining loan on Castle Grande land appears to have been diverted to Madison Financial through a third party. By using this circuitous route, additional Madison Guaranty investments in Madison Financial was disguised as a loan to Ward.

Mr. HUBBELL. Senator, that's why I was trying to focus on timing. At the closing, when I heard about the closing, I was told that the transaction was there, and I was told that one of my lawyers was there that I have great respect for. I also knew that Seth had given up consideration for the deal, that being the \$175,000 that he would have been entitled to at closing. So I wasn't concerned then.

When I read those reports, obviously it raised a flag to me. I read them, and I was concerned about it. I am not trying to tell you I wasn't concerned about it.

The CHAIRMAN. All right, because I think——

Mr. HUBBELL. I was trying to put it in the context of timing, of when I became concerned.

Mr. CHERTOFF. Did you know in 1984 there was actually an order in place, an agreement with the regulators, strictly limiting the amount of investments that the savings and loan could make?

Mr. HUBBELL. No, I knew that in 1989, Mike.

Mr. CHERTOFF. When did you see this 1986 examination report?

Mr. HUBBELL. In 1989.

Mr. CHERTOFF. Now, you did know, though, shortly after the closing in 1985, that this entire deal had been structured so that Mr. Ward didn't put anything at risk, didn't stand to benefit from the proceeds of the sales, didn't put up any money for the purchase, and was holding it in order to help the savings and loan avoid a limitation on what it could do in its own name?

Mr. HUBBELL. I did know all of that. I also knew that he had deferred receiving his commission.

Mr. CHERTOFF. The commission was going to be for his agreeing to hold the property?

Mr. HUBBELL. No, he would have been entitled to a commission at the closing.

Mr. CHERTOFF. For buying the property?

Mr. HUBBELL. He would have been entitled to 10 percent of the \$1,750,000.

Mr. CHERTOFF. For the finder's fee?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. But in terms of his agreement to participate in this transaction, you understood he was agreeing to participate in a transaction in which he was holding property or creating the illusion of being the owner?

Mr. HUBBELL. A part of the property, yes.

Mr. CHERTOFF. When in reality he wasn't really the owner because he didn't have the attributes of what an owner of property has; he wasn't putting money at risk, he wouldn't gain from the property, and he wasn't putting money up for the purchase.

Did you go to anybody in the firm, Mr. Thrash or anybody else, and say you guys better be careful about this transaction?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. In your discussions with Mr. Ward, were you involved in his later transactions? Did you know, for example, about the February 28, 1986 transactions which wound up discharging the rest of the liability on Mr. Ward's note?

Mr. HUBBELL. I was aware after they were done, yes.

Mr. CHERTOFF. Were you aware that they were all done on a single day?

Mr. HUBBELL. No.

Mr. CHERTOFF. Were you aware that Madison Guaranty gave Mr. Ward a \$400,000 loan in March 1986?

Mr. HUBBELL. I have some memory of that. I don't know the details of all of that.

Mr. CHERTOFF. What were you told that was about?

Mr. HUBBELL. I don't know. There were attempts to infuse capital, and I know some other people were involved. I just don't know what it was all about. I didn't try to follow it.

Mr. CHERTOFF. How does a loan to Mr. Ward infuse capital?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. You have testified earlier you were concerned about Mr. Ward—

Mr. HUBBELL. No. I testified that when I read the reports, I became concerned.

Mr. CHERTOFF. Back in 1985, you testified one of the reasons you had a discussion with Mr. Ward about this nonrecourse loan was because you were concerned about whether Mr. Ward would get obligated in a way that would jam him up; right?

Mr. HUBBELL. I was concerned when he was talking about taking the property himself, that he would be able to meet those obligations, yes.

Mr. CHERTOFF. Was your concern for Mr. Ward diminished in 1986?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. You didn't care anymore in 1986?

Mr. HUBBELL. No, my concern about him personally had not diminished, but my concern about the transaction had diminished because it was a nonrecourse loan.

Mr. CHERTOFF. When he called you in 1986 and told you he had gotten a \$400,000 loan from Madison Guaranty, did you wonder about that?

Mr. HUBBELL. I am sure I did, yes.

Mr. CHERTOFF. Did you wonder about the fact that there was a crossing note within a few weeks in which Madison Financial took out a note to Ward for \$300,000?

Mr. HUBBELL. Did I worry about it?

Mr. CHERTOFF. Did you wonder about it?

Mr. HUBBELL. He was still doing transactions with Madison, yes.

Mr. CHERTOFF. So he is both borrowing money from Madison and lending money to Madison at the same time?

Mr. HUBBELL. Right.

Mr. CHERTOFF. You didn't think that was odd?

I am wondering why, at some point, somebody, let alone an experienced attorney who has some personal interest in making sure a family member doesn't get hurt in some way, doesn't see a red flag go up and say there is something about this that's fishy, let me find out. I am trying to——

Mr. HUBBELL. I was concerned for my father-in-law, but who would I go to except my father-in-law?

Mr. CHERTOFF. Did you ask him about it?

Mr. HUBBELL. He was talking to me about it.

Mr. CHERTOFF. Did his explanation satisfy you?

Mr. HUBBELL. I didn't understand it.

Mr. CHERTOFF. Did you try to go to someone at Madison to try to find out about it?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. Did he tell you about the option?

Mr. HUBBELL. I know that at some point I knew about an option, but I read that report yesterday, and I still don't understand the option.

Mr. CHERTOFF. That option was for the same piece of property that was also involved in this crossing note for \$300,000?

Mr. HUBBELL. Mike, maybe my mind is gone, but I read that report and I still don't understand the option, so I can't tell you what that option is for.

Mr. CHERTOFF. Did you have discussion with Mr. Ward about the option in 1986?

Mr. HUBBELL. I am sure I did.

Mr. CHERTOFF. Do you think he mentioned to you it is alright because someone from your firm helped me out with it?

Mr. HUBBELL. No, I don't.

Mr. CHERTOFF. Can you think of any reason why, given the discussions we now have established you were having with Mr. Ward about all these different transactions emanating from this original purchase, can you tell us why he went to Mrs. Clinton to do this option?

Mr. HUBBELL. Because he knew she was on retainer for Madison. It doesn't surprise me at all that he went to Mrs. Clinton. He dealt with Mrs. Clinton on almost a daily basis for another client.

Mr. CHERTOFF. And that would be for who?

Mr. HUBBELL. The Little Rock Airport Commission.

Mr. CHERTOFF. What was his dealing with her on that?

Mr. HUBBELL. He was Chairman of the Commission and she was the attorney for the Little Rock Airport Commission.

Mr. CHERTOFF. You think he went to her to do this option because he was used to dealing with her, he was comfortable dealing with her?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. I guess your impression is he used to talk to her about business as well?

Mr. HUBBELL. As far as the Airport Commission, I am sure he did.

Mr. CHERTOFF. Well, the option had nothing do with the Airport Commission, did it?

Mr. HUBBELL. No.

Mr. CHERTOFF. And that was business, wasn't it?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. So what do you know about Mr. Ward's discussions of business with Mrs. Clinton?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. I think my time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Hubbell, did the Rose Law Firm have a program or a policy to, after a period of time, destroy files and records in order not to build up an overload in terms of storage?

Mr. HUBBELL. Yes. It wasn't a written policy, but on a yearly basis, at a minimum, we were given information about the closed files and asked to destroy as much as we could.

Senator SARBANES. I guess it is quite possible that these files, which have now been furnished and provided in response to various inquiries—and everyone's assaulting you for taking them and I understand that—but if they had been left, they might have been destroyed at the firm in the normal course of cleaning out past records; is that possible?

Mr. HUBBELL. It is certainly possible. I was surprised to find what we did, to be honest with you.

Senator SARBANES. You mean when you looked in 1992—

Mr. HUBBELL. Yes.

Senator SARBANES. When you started out, you thought more of those files would be gone?

Mr. HUBBELL. I was surprised that we would have any files.

Senator SARBANES. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. What was the normal timeframe within which people at the firm were told to hold on to files before they had them destroyed under this procedure?

Mr. HUBBELL. There wasn't a policy. Everybody was aware that we had a 3-year statute, but it depended on the individual lawyer.

Mr. CHERTOFF. I know what you mean, but for everyone who is not a lawyer, what do you mean by a "3-year statute"?

Mr. HUBBELL. With regard to negligence and performing legal work, it is 3 years from the act, so you usually keep everything for 3 years. Now some people regularly threw things out. Even though you have a 3-year statute, you still might purge the file after a year just to save space.

Mr. CHERTOFF. When you say a 3-year statute, am I right, your insurance carrier would want the firm to keep all documents that might be the subject of litigation within 3 years after—

Mr. HUBBELL. I am sure of that, yes.

Mr. CHERTOFF. If you have, for example, an option generated in May 1986, your statute for possible claims on malpractice, or whatever, wouldn't run, under Arkansas law, until May 1989; right?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Three years. So you wouldn't want to destroy those documents in 1988, would you?

Mr. HUBBELL. If we are talking about the specific, I can't imagine that we did, but we certainly could have.

Mr. CHERTOFF. Well, in fact, and we can put it up on the Elmo, and I will pass it down to you, I have what is, I guess, a form that the firm typically used to talk about when things ought to be destroyed using this document policy. We will get it down to you.

It is dated July 21, 1988 to Mrs. Clinton from Mary Russell. Are you familiar with this kind of form?

Mr. HUBBELL. I am sure I have seen something similar.

Mr. CHERTOFF. This indicates that Madison Guaranty S&L files including those relating to the Ward option and IDC were ordered destroyed as of July 21, 1988, which is approximately 2 years after the option was prepared. Would you agree with me?

Mr. HUBBELL. That's what it appears to say, yes.

Mr. CHERTOFF. So it was before this statute of limitations on malpractice would have run?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Now, I guess it is supposed to be returned on August 9, 1988 to the records room. In August 1988, Ward versus Madison, the trial between Mr. Ward and the Madison Bank, over these commissions was going on; right?

Mr. HUBBELL. Mike, I don't know exactly when it was filed, but I am not surprised.

Mr. CHERTOFF. It was filed in 1987, but will you accept my representation?

Mr. HUBBELL. Once it was filed, it was going on until 1993.

Mr. CHERTOFF. The first trial in State court was underway in August 1988 at exactly this time period; right?

Mr. HUBBELL. I don't know, Mike. I know I was there, but I can't tell you—

Mr. CHERTOFF. I will represent to you, we have the transcript and—

Mr. HUBBELL. I am not saying you don't; I just don't remember.

Mr. CHERTOFF. Of course, the subject of that case involved, to some degree, the very transactions involving property in this location that we have been talking about, including the Holman Acres which was the subject of the option and the loans; right? That was the subject of the litigation?

Mr. HUBBELL. I thought the subject of the litigation was the commissions.

Mr. CHERTOFF. It was the commissions for property, including this particular piece of property, Holman Acres; right? It was the commissions on the IDC that was the subject—

Mr. HUBBELL. The commissions on the IDC, yes.

Mr. CHERTOFF. So you would agree with me that records relating to the IDC would be within the universe of things that someone would want in discovery. Did anybody contact you or the firm, to

your knowledge, seeking discovery or information about whether the firm had records relating to the IDC in connection with this case?

Mr. HUBBELL. To my knowledge, I don't know.

Mr. CHERTOFF. Mr. Ward originally came to you to ask you to take on the case; right?

Mr. HUBBELL. Right.

Mr. CHERTOFF. Did Mr. Ward ever discuss with you whether there was material in the file that might be helpful to him in terms of his dealing with this case?

Mr. HUBBELL. No.

Mr. CHERTOFF. Do you have a doubt that Mr. Ward knew you had in your file documents that related to the case?

Mr. HUBBELL. I don't, now that I know that we closed the loan. No, I don't know that they helped him or hurt him.

Mr. CHERTOFF. You know the option document was prepared at the firm as well; right?

Mr. HUBBELL. If the option was part of the litigation. I just don't remember that being a big issue, but I read in the report that it was.

Mr. CHERTOFF. Now in 1989 you get engaged—"you" meaning the firm as well as you—to represent the RTC in the case against Frost; right?

Mr. HUBBELL. Correct.

Mr. CHERTOFF. In connection with that, you have to deal with the issue of conflicts of interest; right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Isn't it a fact that the Ward loans themselves became part of the litigation in the Frost case?

Mr. HUBBELL. We looked at the Ward loans as possible damages.

Mr. CHERTOFF. So you understood, in the preparation of the case against Frost, at least at some point, that the very loans that your father-in-law had been involved in, that you had been discussing with him, that the firm had been involved in closing on, that these could become ingredients of the case you were handling for the RTC?

Mr. HUBBELL. I didn't think so, Mike. We weren't focusing on the initial purchase. We were focusing on the subsequent sales.

Mr. CHERTOFF. What about the subsequent loans, for example, the \$400,000 loan from Madison to Ward and the \$300,000 loan back from Ward to Madison, was that part of it?

Mr. HUBBELL. I don't know the specifics. I think we were focusing initially on loans to Governor Tucker, Senator Fulbright, and some others.

Mr. CHERTOFF. You knew that loans to Governor Tucker and Senator Fulbright were involved in this?

Mr. HUBBELL. Yes, I did. Initially when there were spreadsheets made on this transaction, that being the Castle Grande transaction or the IDC transaction, the RTC was showing this as still a profitable loan for the institution. So, initially, we were not going to include it in our damage calculation because it actually showed a profit.

Mr. CHERTOFF. Then you learned it was really a \$4 million loss?

Mr. HUBBELL. No, I did not. Even to the point of settlement, I don't think there was an issue of whether there was a loss in this transaction or not.

Mr. CHERTOFF. Well, in 1989 you understood this Castle Grande transaction or IDC transaction was going to be part of the litigation involving Frost; right, as damages potentially?

Mr. HUBBELL. Potentially. We had to make a determination of whether to include that or not.

Mr. CHERTOFF. You understood at least as of 1989 there was a relationship between Castle Grande and the IDC?

Mr. HUBBELL. I knew about Castle Grande and the IDC from my father-in-law from the get-go.

Mr. CHERTOFF. He didn't make a secret of the relationship between those two, did he?

Mr. HUBBELL. Not that I know of.

Mr. CHERTOFF. Now at the same time that this case is going on where you are representing the RTC against Frost, the case that your father-in-law has against Madison on the commissions, that's not over yet because the RTC was not content to accept the jury verdict in which your father-in-law won the commissions; right?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. So the RTC went back to try to reclaim that money from your father-in-law; right?

Mr. HUBBELL. It did, it appealed the judgment. Then, once the money was obtained from the escrow fund, it continued to appeal the decision of the jury.

Mr. CHERTOFF. In fact, there was a report called the Borod & Huggins report?

Mr. HUBBELL. Borod.

Mr. CHERTOFF. The Borod & Huggins report, which at a point in time you sought to obtain in connection with the RTC versus Frost case; right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. And you learned there was an objection raised by Madison Guaranty Savings & Loan because they felt that that was something that, if it got transmitted to Mr. Ward, might interfere with the RTC's ability to get the money back from Mr. Ward?

Mr. HUBBELL. I wasn't aware that that was their concern. I was aware they were concerned about me representing the RTC in the litigation, and concerned that I was going to be transmitting information to Mr. Ward that I would obtain in the Frost case. I wasn't aware that specifically, they were concerned that I would take the Borod & Huggins report and give it to Mr. Ward or anything like that.

Mr. CHERTOFF. Did you get the Borod & Huggins report?

Mr. HUBBELL. Yes, I did.

Mr. CHERTOFF. Did it ring a bell when you read about the transactions they were talking about, that these were some of the same transactions your father-in-law was involved in?

Mr. HUBBELL. There was actually even some discussion about my father-in-law in the Borod & Huggins report.

Mr. CHERTOFF. Did you discuss that with your father-in-law?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. Did you, at that point, become concerned about your father-in-law's exposure?

Mr. HUBBELL. I think I told you, at about the same time I was reading exam reports and other reports and I was concerned about the allegations that were being made.

Mr. CHERTOFF. Now, I want to—

Mr. HUBBELL. Mike, I believe that I read those before I read the similar-type accusations and pleadings, whenever they came up. I mean, if the pleadings and the briefs that were filed by the RTC raise those issues, that's when I first became concerned. I can't tell you exactly which one I read first.

Mr. CHERTOFF. Now, you understand that this whole issue about whether the Rose Law Firm had a conflict in taking on the Frost case is really tied up, in part, with an understanding of what you knew about Mr. Ward's involvement in these loans and what the Rose Law Firm's involvement in these loans was?

Mr. HUBBELL. No, I don't.

Mr. CHERTOFF. You don't see any connection between the two?

Mr. HUBBELL. No, I don't see that as the issue.

Mr. CHERTOFF. Apparently, there are several Pillsbury reports. There is a Pillsbury report that actually deals with the Frost litigation issue. I want to read to you a portion of that from page 9.

Mr. HUBBELL. Which report is this?

Mr. CHERTOFF. This is one of the Pillsbury reports. I think it deals in particular with the Frost litigation. It is at page 9.

The CHAIRMAN. Can we get Mr. Hubbell a copy? Do you have a copy of that report? We are going to get it right down to you.

Mr. CHERTOFF. If you look at the last paragraph, near the bottom of the page, "In addition"—well, let me go back.

The preceding paragraph begins by saying "Representation of the RTC in the Frost case," and they mean representation by Mr. Hubbell, by the firm, "was adverse to the interests of Ward." They go on to discuss why Ward had interests that were adverse to those of the RTC in the Frost case.

Then, they go further. In the next paragraph, they say:

In addition, and more serious to the RTC, the RTC's position that loans to Ward would have 'jury appeal' as improper loans was inconsistent with the interests of the Rose Law Firm, which had represented Ward and Madison Guaranty in the transaction that originally gave rise to the loans. Thus, the Rose Law Firm's own conduct in transactions involving Ward and Madison Guaranty that were potentially material to the Frost litigation was in question to the degree that the RTC's ability to have a fair trial could have been affected had that conduct been disclosed to the jury. The circumstances raise a serious question as to how the Rose Law Firm could have concluded that its representation of the RTC would not be materially limited by its prior representation of Ward and Madison Guaranty.

This, by the way, is prepared even before the billing records; detailing more of the nature of that, have come out.

I want to go down to the last sentence on page 10, where they go on to say:

While, in different circumstances, it could have been appropriate to screen Hubbell from any participation in the Frost case overall, because of his relationships with Ward, it is unthinkable to keep the lead attorney in a contested litigation in the dark concerning issues material to the case, particularly without informing the client.

Evidently, the people at Pillsbury, as Ms. Black from the RTC, who we heard from yesterday, saw a very clear connection between these loans, the original IDC and Castle Grande transaction, and this conflict issue. This conflict issue is the thing that was explored again and again; first by the FDIC in 1993, the result of which is based on only half of the facts. They only had half of the facts so they came up with a conclusion that they don't have a problem. You send that over to the White House.

But, eventually, the RTC IG's Office and this group of Pillsbury lawyers do develop more of the facts and they see a serious conflict of interest.

Now, I want to ask you, Mr. Hubbell, can you really suggest to us that when you learned in 1993 and in 1994—particularly from Ms. Breslaw in September 1993—that this issue of the Rose Law Firm conflicts of interest and what Rose had done for the RTC and what Rose had done for Madison, when you learned this was going to be reopened, you didn't understand this was going to just open the whole can of worms up?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. You had discussions with Mr. Kennedy about it?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. How often did you have discussions with him about it?

Mr. HUBBELL. That's hard to say because I would talk to Mr. Kennedy a lot over issues at Justice.

Mr. CHERTOFF. You knew Mr. Lindsey was concerned about it?

Mr. HUBBELL. I knew Mr. Lindsey was involved in being the point person at the White House at that point to respond to inquiries regarding Madison.

Mr. CHERTOFF. You knew Mr. Altman, as the head of the RTC, would ultimately make decisions about whether the RTC would pursue a case against Madison or against you personally regarding this issue of the conflict of interest?

Mr. HUBBELL. No, I did not know that.

Mr. CHERTOFF. You didn't know Mr. Altman was the head of the RTC?

Mr. HUBBELL. I did know he was the head of the RTC.

Mr. CHERTOFF. You could have figured out that ultimately he would be the person to make the final call?

Mr. HUBBELL. I guess I could have figured it out. I didn't even think of it in that regard.

Mr. CHERTOFF. Mr. Nussbaum called you about the fact that he was having discussions with Mr. Altman about whether Altman should recuse himself; right?

Mr. HUBBELL. No, I didn't say that. I said I had heard Mr. Nussbaum talk about his discussions with Mr. Altman about whether he should recuse or not.

Mr. CHERTOFF. You heard that in February 1994 from Mr. Nussbaum?

Mr. HUBBELL. That's right, but you had mentioned a telephone conversation where Bernie talked to me about it specifically—

Mr. CHERTOFF. You don't know if it was by telephone or in person, but you had a discussion with Mr. Nussbaum?

Mr. HUBBELL. I didn't have a discussion. If you know Mr. Nussbaum, you don't necessarily have discussions, but I certainly heard about the issue of recusal.

Mr. CHERTOFF. So he saw fit to tell you about it?

Mr. HUBBELL. I had heard it, yes.

Mr. CHERTOFF. In 1993, you were having conversations with Seth Ward; right?

Mr. HUBBELL. When?

Mr. CHERTOFF. In 1993.

Mr. HUBBELL. Yes, I was.

Mr. CHERTOFF. You said that was about unfinished business at Madison?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. What was that unfinished business?

Mr. HUBBELL. In 1993, early 1993, he and the RTC were discussing settling the litigation between the two, and his lawyer had made a recommendation that they accept the offer of settlement.

Mr. CHERTOFF. They didn't want to accept it?

Mr. HUBBELL. No, Seth Ward didn't want to accept it.

Mr. CHERTOFF. So what was Mr. Ward talking to you about?

Mr. HUBBELL. He wanted to know what I thought about it.

Mr. CHERTOFF. Did he want your help in getting the settlement offer changed?

Mr. HUBBELL. Oh, no.

Mr. CHERTOFF. Did he tell you that he had communicated with his Senator, tried to get some intervention against the RTC from his Senator?

Mr. HUBBELL. I know that Mr. Ward would write the Senators complaining about the conduct of the RTC.

Mr. CHERTOFF. Did you hear that was passed over to the White House Counsel's Office?

Mr. HUBBELL. No.

Mr. CHERTOFF. Did you hear that Mr. Foster saw it?

Mr. HUBBELL. No.

Mr. CHERTOFF. Did you hear that Mr. Foster had to recuse himself from dealing with that issue?

Mr. HUBBELL. No.

Mr. CHERTOFF. Did Mr. Foster tell you about the fact that it had come across his desk?

Mr. HUBBELL. No.

Mr. CHERTOFF. How did you leave it with Mr. Ward?

Mr. HUBBELL. I told him to rely on his lawyer. He was the best lawyer I knew, and that he ought to rely on him.

Mr. CHERTOFF. He finally settled; right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. When was that?

Mr. HUBBELL. Sometime in 1993, early 1993.

Mr. CHERTOFF. Did he tell you when he settled, did he call you and tell you when he settled?

Mr. HUBBELL. I don't know if he told me or Mr. Ray told me.

Mr. CHERTOFF. So you were still keeping up on the course of this dispute between the RTC and Mr. Ward as late as 1993?

Mr. HUBBELL. Yes.

The CHAIRMAN. Mr. Hubbell, I think we can wrap this up. With your indulgence, we will continue.

Senator SARBANES. I have a couple of questions, but I will yield.

Mr. CHERTOFF. Mr. Hubbell, I want to ask you in connection with, I guess, judging the quality of your testimony, whether you have had discussions with anybody in the last couple of years concerning any financial arrangements that might be made in terms of work or any other kind of financial arrangements when you get out of jail?

Mr. HUBBELL. Me?

Mr. CHERTOFF. I don't mean with your wife or family. I mean, with anybody who has a business or anything of that sort.

Mr. HUBBELL. No, I have not.

Mr. CHERTOFF. Are you familiar with a group called the LIPO Group?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. What kind of entity is that?

Mr. HUBBELL. They are a group in Indonesia that at one time had a major ownership of Worthen Bank.

Mr. CHERTOFF. Have you had discussions with anybody, either from the LIPO Group or representing the LIPO Group, concerning whether you might do any business with them or work for them when you get out of jail?

Mr. HUBBELL. No, I have not.

Mr. CHERTOFF. Have you had discussions with representatives of the LIPO Group at all in the last 3 years?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. When?

Mr. HUBBELL. When I left the Justice Department prior to my pleading guilty.

Mr. CHERTOFF. What was the nature of those discussions?

Mr. HUBBELL. I'm sorry, I can't disclose those.

Mr. CHERTOFF. Did it involve something of a financial nature?

Mr. HUBBELL. May I consult with my lawyer?

[Witness conferred with counsel.]

Mr. Chertoff, I don't think that I am violating the attorney-client privilege. The LIPO Group itself was not my client, but a representative of that group, one of their affiliates, was a client of mine, and the nature of all the conversations I had related to that representation. That representation occurred in the summer and fall of 1994.

Mr. CHERTOFF. Over what period of time, how long did the representation last?

Mr. HUBBELL. It lasted until I pled guilty in 1994.

Mr. CHERTOFF. Which was when?

Mr. HUBBELL. December 1994.

Mr. CHERTOFF. So it lasted for over a year?

Mr. HUBBELL. No, it did not. I left the Justice Department in April, and I believe I started representing them sometime in the summer of 1994.

Mr. CHERTOFF. So it lasted for about 5 months?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. You were in practice in Washington?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did you have other clients?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Had you had a preexisting relationship with this group?

Mr. HUBBELL. Yes.

Senator SARBANES. Mr. Chairman, how does this—I am not quite sure—

Mr. HUBBELL. I want to make clear, I have had no discussions about getting paid by anybody when I leave jail. I have no employment opportunities at this moment.

Mr. CHERTOFF. I guess the question is actually whether, in connection with this representation, you received a large amount of money and whether that may have had an impact on the degree of your cooperation with the Independent Counsel or with us?

Mr. HUBBELL. That's pretty rotten.

Mr. CHERTOFF. I am just going to ask you the question about what the nature of the arrangement was.

Mr. HUBBELL. I was doing work for the client and they paid me like the other clients—

Mr. CHERTOFF. On an hourly basis?

Mr. HUBBELL. No. I will not represent anybody on a hourly basis anymore.

The CHAIRMAN. Let me suggest this. I am going to suggest that any further questions along this line be taken in a private deposition. I will ask counsel to not go forward as it relates to pursuing this line. I think that would be in the best interest. If there are facts that we should know, that's the way we can pursue them. If there's information that is not relevant, there is no need to bring it out in a public way.

It would seem to me that that would be best, and I would ask Mr. Chertoff to suspend any further questioning of Mr. Hubbell as it relates to this particular area that has been opened up.

Senator Sarbanes.

Senator SARBANES. Could I suggest that that suggestion might have been advisable some time ago before all of these innuendos were thrown out on the record. It may in fact be terribly unfair.

Mr. HUBBELL. I think it is awfully unfair. I would have to say that the Chairman has done everything possible, I have answered questions for people for a year and a half now. Anybody who asked a question, I have answered. I have never invoked the privilege. I have never done anything but answer your questions for a year and a half.

And now to imply that I am not entitled to work at all, Mike, between that time and wanting to know about my clients, I feel I am entitled to say something. I have for a year and a half been hauled all over this country, answering questions, and I have answered every dadgum one of them.

I am a little bit upset that, after it is over, somebody wants to know about my private business like there's something wrong with me trying to do some work and support my family. I have a wife and four children, I needed the work, and I did the work. But there wasn't anything improper involved with it and nobody promised me a damned thing.

The CHAIRMAN. I think, Mr. Hubbell, you are certainly entitled to put that answer on the record, and I accept it. I suggest if there be any further need to explore that avenue, we do it on camera, by way of deposition, so that we can ascertain whether or not there is any relevance. It would seem to me that would be the manner in which we should proceed.

Senator SARBANES. Mr. Chairman, the hearing having reached this note, I have no further questions and I hope that we are at a conclusion here. Are we at a conclusion?

The CHAIRMAN. No further questions.

I want to thank you, Mr. Hubbell, for your participation. I think you have brought a certain note of clarity. As it relates to the billing records, you have answered and you have narrowed tremendously the scope of where those records could have been. For that, in particular, I want to thank you, because that's an area that was open, that we were not comfortable with in terms of where they may or may not have been.

I want to thank you for your testimony under these very difficult circumstances.

We stand in recess until tomorrow at 10 a.m.

[Whereupon, at 6:30 p.m., the hearing was adjourned, to reconvene at 10:00 a.m., on Thursday, February 8, 1996.]

[Appendix supplied for the record follows:]

1 A Yeah. I mean, I'm basing all of this on what
2 you're telling me.

3 Q Just so we're clear, all I'm telling you is
4 that she has given a statement to the effect that she
5 typed this letter. She didn't say, really, anything
6 beyond that. She did not describe the circumstances.
7 She just said she recognized it as something that she
8 typed.

9 A Okay. And I said based on that, if she did,
10 then what I do remember is Mr. Ward coming into my
11 office on occasion with handwritten letters asking my
12 secretary to type things because he didn't have one.
13 And I would give it to Debbie, and she would type it.
14 And after she was finished, she would bring it back into
15 my office. And he would sit in my office and have a cup
16 of coffee.

17 Q And you might have read it over and talked to
18 him briefly?

19 A Yeah. Or he might have gave it to me to read
20 it, or vice versa, or not at all.

21 Q But with respect to this particular letter, do
22 you have any recollection of whether you did read it and
23 discuss it with Mr. Ward?

24 A No.

25 Q At this time, September 1985, what was your
26 understanding, if any, with respect to the reasons why

TELEPHONE INTERVIEW OF WEBSTER L. HUBBELL

1 Madison was not going to buy the entire property itself?

2 A My understanding was based on what Mr. Ward
3 told me, that maybe whoever closed the loan was -- was
4 that Madison had limits on what it could own in its own
5 name, and so Mr. Ward was going to own part of it until
6 it could be sold.

7 Q At this time, August, September, October 1985
8 and, again, to the best of your recollection, did you
9 give any thought as to whether it was a permissible way
10 of dealing with the limits you've just described to have
11 Mr. Ward buy a part of this property on the terms as
12 you've described them earlier in this interview, which
13 is to say with the purchase of Mr. Ward's parcel being
14 100 percent financed by Madison and with Mr. Ward to get
15 a commission on the sale of any part of the property?

16 A No. I wouldn't one way or the other.

17 Q In 1985, did you give any thought whatsoever
18 as to whether, given the terms as you understood them,
19 Mr. Ward might be considered a straw man or nominee?

20 A Yeah. You know, you use the word, and I
21 remember it back in law school. But I didn't give it
22 any consideration, you know. "Straw man" means, to me,
23 somebody who you clear title through. So I don't think
24 that's the way I would look at it, if I sold property,
25 and you're trying to clear it to sell it through a straw
26 man.

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1 necessary to replace the firm.

2 Since the case had been filed in Arkansas, I wanted to
3 hire an Arkansas firm. An accounting malpractice case is
4 complicated and it requires a sophisticated firm. Arkansas
5 is a small state. There were not many firms that I believed
6 were suitable.

7 I considered several firms and ultimately hired the
8 Rose Law Firm. I made this decision because I was very
9 satisfied with the manner in which the Rose firm had handled
10 a previous case.

11 When a client hires a law firm, and the Government was
12 a client, the law firm has an obligation to ensure that
13 there are no conflicts of interest. The ethical rules
14 require lawyers to do this, even if they are not asked.

15 The client cannot do this job itself. Short of issuing
16 a subpoena, the Government does not know and has no way of
17 knowing who the Rose Law Firm's other clients are. Only the
18 Rose Law Firm has that information. When I retained the law
19 firm on behalf of the Government, it disclosed no conflicts
20 of interest.

21 A few months after I had hired the Rose firm, I learned
22 that Seth Ward was Webster Hubbell's father-in-law and that
23 Ward was in litigation with Madison. Under the ethical
24 rules, an adverse interest by an in-law is not imputed to a
25 lawyer. It is not a conflict of interest. Nevertheless, I

Breslaw

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1 asked Mr. Hubbell about the Ward matter. Mr. Hubbell told
2 me that he was not representing Mr. Ward and that he would
3 not do so in the future.

4 He also told me that his relationship with his
5 father-in-law was not a close one. I recall him saying that
6 Mr. Ward was an ardent Republican and that he was an active
7 Democrat.

8 I asked Mr. Hubbell to confirm in writing the fact that
9 he did not represent Ward. He wrote me a letter to that
10 effect, and I concluded, based on that information, that
11 there was no conflict.

12 Given the same information, I would reach the same
13 conclusion today. The conclusion that others have made
14 that there was a conflict of interest, is based on
15 information that I did not have and I do not have. The case
16 against the accounting firm was settled in 1991 for over
17 \$1,000,000.

18 To the best of my knowledge, the Rose Law Firm no
19 longer represented the Government in Madison matters after
20 that settlement. Later, through the press, I learned that
21 the Rose Law Firm had represented Madison in the mid-1980s
22 in connection with a matter before a state agency.

23 These stories first began to appear during the 1992
24 presidential campaign. However, the fact that Madison was a
25 former client of the Rose firm does not create a conflict of

FDICFederal Deposit Insurance Corporation
Washington, DC 20429

General Counsel:

February 17, 1994


MEMORANDUM TO: Chairman Hove

FROM: Douglas H. Jones *Doug H. Jones*
Acting General Counsel

SUBJECT: Report on the Retention of the Rose Law Firm

As you requested, we have reviewed the FDIC's 1989 retention of the Rose Law Firm with respect to Madison Guaranty Savings and Loan. Attached is a report on our review and findings. As you can see from the report, we found no basis to conclude that the retention involved a conflict of interest by the law firm. Accordingly, we are not recommending any sanctions against the firm.

Attachment


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February 17, 1994

**LEGAL DIVISION REPORT ON THE RETENTION OF THE ROSE LAW FIRM
FOR THE MADISON GUARANTY SAVINGS AND LOAN CONSERVATORSHIP**

The purpose of this report is to review the facts and circumstances surrounding the retention of the Rose Law Firm (the "Firm") for the representation of the conservatorship of Madison Guaranty Savings & Loan (the "Conservatorship" and the "S&L", respectively) in litigation against the Frost & Co. ("Frost") accounting firm. It explores (1) whether the Firm's prior representation of the S&L before the Arkansas Securities Commissioner constituted a conflict of interest; (2) whether the litigation against the Conservatorship by the father-in-law of the Firm partner in charge of the Frost litigation was a conflict of interest; and (3) whether any action against the Firm is warranted.

Assertions have been made that the Firm had conflicts of interest that should have prohibited it from representing the Conservatorship and the FDIC in the Frost litigation. We have reviewed the time period in which the FDIC was responsible for managing the Conservatorship (from February 28, 1989 through August 9, 1989, when the Resolution Trust Corporation was established) to determine the facts related to the Firm's retention. As a part of our review, we looked at all relevant internal FDIC and RTC materials from that time, reviewed relevant materials identified by the Firm, and interviewed each of the participants and others who were involved with the Conservatorship.

As detailed below, based on the information available to us, we have found no basis to conclude that under the then applicable rules either situation involved a conflict of interest. Accordingly, we recommend no sanctions against the Firm.

Background

On February 7, 1989, the FDIC entered into an agreement with the Federal Savings and Loan Insurance Corporation ("FSLIC") to act as agent for the FSLIC in any receivership or conservatorship appointed for an insured savings association after January 1, 1989. On February 28, 1989, FSLIC was appointed conservator for the Madison Guaranty Savings & Loan. Pursuant to the agreement with the FSLIC, the FDIC was appointed the managing agent for the Conservatorship. In that role, the FDIC was required to marshal the institution's assets and pursue all claims by and defend those against the S&L. Among the litigation existing at the S&L at that time was a suit against the institution's former auditor, Frost & Co. As managing agent, it was the FDIC's responsibility



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to determine whether that suit had any value and, if so, to continue the pursuit of the action. The FDIC's formal role ended on August 9, 1989, with the creation of the RTC, whose function was to serve as receiver or conservator for any S&L closed after January 1, 1989.

The Firm's Prior Representation

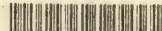
In 1985, the Firm represented the S&L before the Arkansas Securities Commissioner on two matters: a plan to issue a \$3 million private placement of preferred stock in the S&L, on which the Commissioner was asked to issue an opinion; and an application by which the S&L, assuming it raised the capital, sought to set up a service corporation that would become a wholly-owned broker dealer of securities. The opinion was issued on May 14, 1985 and the Commissioner approved the service corporation on September 20, 1985, although placing a condition on the approval that the S&L must raise the capital by December 31, 1985. The capital was never raised and the plan was not implemented. There were no communications between the Commissioner's staff and the Firm after 1985 with respect to the securities placement or the plan.

Part of the submission in support of these two applications was an audit of the financial statements of the S&L performed by Frost for calendar year 1984. Certain adjustments to these financial statements were questioned by the Commissioner's office. The records of the Commissioner's office show that the effect of those adjustments was explained in letters from Frost and John Latham, the S&L's chief executive officer, attached to a letter from the Firm on July 25, 1985. There is no indication that the Firm retained the auditor, assisted in any way in the audit or took any position as to the quality of the audit.

In 1988, the S&L initiated litigation against Frost charging that the auditor had been negligent, reckless and breached its contract by failing to fairly represent the S&L's financial condition in the 1984 and 1985 audits. The S&L was represented in the litigation by the law firm of Gerrish and McCreary.

The Gerrish firm also was involved in defending directors and officers of failed banks in actions instituted by the FDIC. After FDIC was appointed managing agent of the Conservatorship, the FDIC staff attorney responsible for the Frost litigation concluded that, pursuant to FDIC policy, the firm had a conflict

The FDIC's Legal Division continued to provide legal support to the RTC with staff dedicated to RTC legal matters until September 1991, when all RTC legal matters were assumed by a newly created Legal Division within the RTC comprised of the FDIC staff formerly dedicated to RTC work.

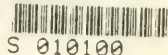


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of interest with the FDIC and had to be replaced. The staff attorney also concluded that few firms in Arkansas had the experience and capacity to do accounting malpractice work, which is considered to be complex in nature. The staff attorney first considered the Arkansas law firm of Wright, Lindsey & Jennings, which had represented FDIC in other matters, but it too had a conflict of interest. The staff attorney then contacted the Rose firm based on previous work done by the firm on behalf of the FDIC in connection with the Corning Bank failure.²

The staff attorney contacted a partner of the firm (based on the staff attorney's recollection, probably Webster Hubbell) and asked the firm to take over representation. The staff attorney is sure the firm would have been asked about any conflicts of interest, but due to the passage of time has no specific recollection of making that request or any response that may have been made. Richard Donovan, a partner with the firm who worked on the case, states that he recalls Mr. Hubbell having advised the staff attorney of prior representation of the S&L on a matter involving the Arkansas Securities Commissioner. Mr. Hubbell's recollection differs. He recalls advising the staff attorney very generally that the firm had done a small amount of work for the S&L years earlier, but that he did not view that as amounting to a conflict. He believes the work he was aware of was lending and collection work. He says he does not believe he was aware of the earlier securities work at that time, so he does not believe he discussed it with the staff attorney then. The FDIC staff attorney has no recollection of the issue being raised and says that if it had been it would have been discussed with the attorney's supervisor. The supervisor has no recollection of the issue being raised.

² While the firm had sent a letter to the FDIC dated February 28, 1989, soliciting work relating to any S&L failures, it does not appear the staff attorney was aware of that letter or that it influenced her decision to ask the firm to represent the FDIC. Also, assertions have been made that the letter may have been deceptive and misled the FDIC regarding prior representation because it stated "the firm does not represent any savings and loan association in state or federal regulatory matters." However, the letter also states "[f]rom time to time we have provided specialized service to some savings and loan associations in such areas as employment discrimination, work-out of participation loans and bankruptcy." The firm also acknowledged in the letter that there may be individual transactions or situations where a conflict of interest could arise.



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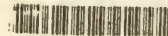
The Existence of a Suit Involving Mr. Hubbell's Family

At the time the conservator was appointed (and when the firm was retained), Mr. Hubbell's father-in-law, Seth Ward, Sr., was involved in litigation with the S&L. Mr. Hubbell's father-in-law had obtained a judgment of roughly \$470,000 for commissions allegedly owed him by the S&L for the sale of real estate on behalf of Madison Financial Corporation, a subsidiary of the S&L. That case was then on appeal.

Mr. Hubbell says he was aware of the Ward litigation but he did not view it as a conflict. He says he believes he did advise the staff attorney about it, but he cannot be certain. The staff attorney does not recall whether the Ward relationship was raised at the time of the firm's retention in March of 1989. However, another FDIC staff attorney became aware of the relationship and informed the staff attorney on the case, in a letter dated June 8, 1989. At that time, the second staff attorney expressed concern that Mr. Hubbell would have access to information through his representation that could be damaging to the litigation involving Mr. Ward. After reviewing the facts, the staff attorney responsible for the Frost litigation concluded that the facts did not pose a conflict. On June 23, 1989, the staff attorney wrote to the FDIC's Managing Agent for the Conservatorship concerning the Hubbell/Ward relationship, stating that Mr. Hubbell had not represented Mr. Ward in the past and he would not do so in the future.³ Mr. Hubbell then sent a letter to the FDIC Managing Agent, dated June 28, 1989, in which he affirmed that he had not and would not in the future represent Mr. Ward in the dispute with the S&L.⁴ Mr. Hubbell also confirmed in an interview that he had not drafted any documents that were involved in the Ward litigation.

³ The staff attorney's letter also noted that the primary attorney in the case was Richard Donovan, not Mr. Hubbell, and stated that Mr. Hubbell was involved only in an indirect way. Based on discussions with the staff attorney, this was meant to indicate that Mr. Donovan, as the junior partner on the case, would do most of the day-to-day work. Based on fee bills for the case, Mr. Hubbell performed a significant amount of work.

⁴ The issue was raised again after Mr. Hubbell's letter when an FDIC credit specialist sent a memorandum to his supervisor expressing concern about the relationship and seeking senior level review of the situation. This memorandum also was called to the attention of the FDIC's Regional Counsel indicating that this should be "a Washington issue" because the staff attorney responsible for the Frost litigation was based in Washington, D.C. No further action appears to have resulted from these subsequent memoranda.



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As an added precaution, according to Mr. Hubbell, Mr. Donovan and Gary Speed, another partner at the Firm who worked on the Frost case, the Firm imposed an informal, unwritten procedure in connection with the Frost litigation that kept Mr. Hubbell from having access to information about his father-in-law. According to Messrs. Donovan and Hubbell, Mr. Hubbell was not allowed access to material such as an investigative report done by the S&L's prior attorneys, and he was kept out of several depositions when information concerning Mr. Ward's loans was expected to be involved. Mr. Speed states that Mr. Hubbell would leave the room if Mr. Ward's name came up during discussions, and that he and Mr. Donovan would not discuss Mr. Ward in the presence of Mr. Hubbell.

Analysis

Criteria for Determining Whether a Conflict Exists

The standards governing the professional conduct of attorneys, including issues relating to actual and potential conflicts of interest, are set forth in codes or rules of professional responsibility and conduct adopted by the various states. Many states have adopted, or have patterned their rules on, the American Bar Association's Model Rules of Professional Conduct ("the Model Rules"). Arkansas adopted the Model Rules as its rules of conduct for attorneys in 1985. The Model Rules generally prohibit an attorney from representing a client where the attorney also represents or previously represented another client whose interests are adverse to the first client. The Model Rules provide that a client may waive a conflict of interest by consenting to the representation after consultation with the attorney and provided the attorney reasonably believes the representation will not adversely affect the relationship with the other client. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7. Under the Model Rules, and all the state rules of which we are aware, it is the attorney, not the client, who has the primary responsibility to identify conflicts of interest when approached with a request to represent a client with respect to a new matter.⁵

⁵ Notwithstanding that the responsibility to identify any potential conflicts rests principally with the attorney, in 1990 the FDIC Legal Division adopted comprehensive policies and procedures governing the retention of law firms and the waiver of actual or potential conflicts of interest. In 1989, the FDIC's conflicts procedures, however, were less formal. Prior to their retention, firms generally were required to respond to a series of questions regarding past and current representations. Unfortunately, in early 1989, due to the tremendous increase in workload as a result of the FDIC's added FSLIC responsibilities,

The relevant provisions under the Arkansas rules of professional conduct provide that:

"A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation"; and

"A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation."

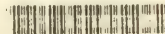
The Firm's Prior Representation

The information regarding whether the Firm disclosed that it had represented the S&L on the prior securities matter is unclear. The more important question, however, is whether a conflict of interest existed that should have been disclosed before the firm agreed to represent the conservator.

In essence, the Firm represented the S&L's interests before the Securities Commissioner in 1985 and it was representing the S&L's interests (on behalf of the S&L's conservator) in 1989. Previous representation of an institution by itself does not create a conflict when a subsequent conservator is appointed for the institution. There is no indication in the records, or based on our review, that the Firm did anything more with respect to the audit in question than take it at face value in its representation in 1985. There did not appear to be any divergence of interest between their representation in 1985 and 1989. As a consequence, the Firm's representation in 1985 was not "directly adverse" to its representation of the Conservatorship in 1989.

In addition, we have found no evidence that the Firm had a close relationship with the S&L which might call into question its independence. The Firm did not serve as general counsel or exclusive or frequent counsel for the S&L. In addition, no member of the Firm served in any senior managerial or directorial

such inquiries were not always documented. In this instance, there are no documents showing what inquiry was made of the Firm.



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relationship with the S&L prior to its failure.

Under the Model Rules, disclosure of prior representation such as involved here may not be required. However, where a firm is aware of such a prior relationship, we would expect it to convey that information to our staff to assist in determining whether to retain the firm. It is not clear whether the information was conveyed to the FDIC staff at the time. However, based on our review, we do not believe the prior representation represented a conflict of interest.

The Existence of a Suit Involving Mr. Hubbell's Family

It is uncertain whether the Hubbell/Ward relationship was disclosed at the time of retention. Nevertheless, it was clearly discussed within three months after retention and the staff attorney concluded there was no conflict. That assessment appears to be correct.

Mr. Hubbell had not represented Mr. Ward so there was no conflict of representation directly adverse to the Conservatorship. Also, Mr. Hubbell's representation of the FDIC did not appear to have any effect on Mr. Ward. Under Arkansas rules, unless Mr. Hubbell's representation of the Conservatorship would be "materially limited" by his "responsibilities to" his father-in-law or his own personal interests, no disclosure was required. Also, FDIC procedures, at that time, would not have required the disclosure of the relationship.

While concern was expressed by some FDIC staff shortly after the firm's retention that Mr. Hubbell would have access to information that could benefit his father-in-law, there is no indication any such information was transferred. Moreover, Arkansas rules of professional conduct (as do all State rules of conduct) prohibit an attorney from revealing information relating to representation of a client, unless the client consents after consultation. As a precaution, the firm apparently imposed its own informal "firewall" to prevent information regarding Mr. Ward from being passed on to Mr. Hubbell. Also, the FDIC's procedures at that time did not require disclosure of a relationship such as existed with respect to Mr. Hubbell and his father-in-law.

Therefore, no actual conflict appears to have existed. While in this case it is unclear whether advance disclosure was made and there was no requirement that Mr. Hubbell's relationship be disclosed, we want to emphasize that on an issue as subjective as this, we believe the better course would have been for the attorney to make clear and full disclosure in writing to the FDIC and let the FDIC as client determine whether in its judgment the representation at issue was likely to affect its interests



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adversely.⁶ Nevertheless, that was not specifically required at the time and, when disclosure was made, the FDIC determined the representation was not adverse.

Conclusion

In 1989, the Legal Division lacked formal procedures regarding the determination of conflicts of interest and, at the same time, the Division's staff was experiencing an enormous increase in workload due to the rapidly expanding duties of the FDIC. As a consequence, in hindsight documentation regarding the retention of the Firm is more limited than would be ideally hoped for. However, based on our review, we have found no basis to determine that either of the alleged instances involved a conflict of interest.

Therefore, we see no basis to recommend any sanctions against the Firm.

⁶ In 1990, the FDIC adopted formal procedures to deal with conflicts which emphasized that waivers must be sought even where there is only the "appearance" of a conflict. Also, in 1990, the Supreme Court of Arkansas recognized that although the "appearance of impropriety" is no longer specifically a part of the state's rules of professional conduct the principle is still a part of the rules. First American Carriers, Inc. v. Kroger Co., 102 Ark. 86, 787 S.W.2d 669 (1990).


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ROSE LAW FIRM
A PROFESSIONAL ASSOCIATION
120 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201
PHONE (501) 578-9131

CLIENT: 91263

MADISON GUARANTY SAVINGS/LOAN
MR. JOHN LATHAM, PRESIDENT
10TH AND MAIN
LITTLE ROCK, AR 72201

Handwritten: HRC - turn suggestions to matter

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #71-0428614) - RETURN THIS STUB WITH YOUR

FOR LEGAL SERVICES RENDERED IN CONNECTION WITH PAID 2018.00

MATTER:

CK #

DATE: 5-21-85

STOCK OFFERING

04/23/85 H. CLINTON

04/23/85 L. BALEDGE
04/23/85 R. MASSEY

04/24/85 H. CLINTON

04/24/85 S. GRIVES

04/24/85 R. MASSEY

04/25/85 H. CLINTON

04/25/85 R. MASSEY

04/26/85 W. GREGORY

04/26/85 R. MASSEY

04/29/85 H. CLINTON

CONFERENCE WITH J. MCCOUGHER AND J. LATHAM; CONFERENCE WITH R. MASSEY
CONFERENCE WITH W. GREGORY
CONFERENCE WITH R. MASSEY
RESEARCH ON PREFERRED STOCK OFFERING
CONFERENCE WITH JOHN LATHAM
CONFERENCE WITH HILLARY RODHAM CLINTON; CONFERENCE WITH LEO BAL
TELEPHONE CONFERENCES WITH R. MASSEY
JOHN LATHAM, DAVIS PITZLER
CONFERENCE WITH R. MASSEY; REVISE
DRAFT DOCUMENTS
DRAFT MINUTES, RESOLUTIONS TO AMEND
CERTIFICATE OF INCORPORATION TO
CLASS OF PREFERRED STOCK PER R.
MASSEY'S INSTRUCTIONS; RELATED
RESEARCH
PREFERRED STOCK OFFERING; RESEARCH
STATE & FEDERAL LAW ON STOCK
AUTHORITY; DRAFTING DOCUMENTS
REVIEW OF SUBSCRIPTION AGREEMENTS
CONFERENCE WITH R. MASSEY
DRAFTING & REVISE DOCUMENTS
CONFERENCE WITH JOHN LATHAM AND
HILLARY RODHAM CLINTON
CONFERENCES WITH R. MASSEY REGARDING
CAPITAL - RAISING PLANS; REVIEW
CONSENT ON DRAFT SUBSCRIPTION
AGREEMENT
CONFERENCE WITH JOHN LATHAM REGARDING
CLASS; RESEARCH PUBLIC REGISTRATION
STATEMENTS; DRAFTING DOCUMENTS
TELEPHONE CONFERENCE WITH R. MASSEY
SECURITIES COMMISSIONERS; TELEPHONE
CONFERENCE WITH R. MASSEY

ROSE LAW FIRM

DKSN028935

**A REPORT ON THE
REPRESENTATION OF
MADISON GUARANTY SAVINGS & LOAN
BY THE
ROSE LAW FIRM**

Prepared For
RESOLUTION TRUST CORPORATION

Prepared By
PILLSBURY MADISON & SUTRO LLP
225 Bush Street
San Francisco, California

December 28, 1995

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I. INTRODUCTION.

Pillsbury Madison & Sutro LLP ("PM&S") was retained by the Resolution Trust Corporation to assist in the investigation of possible civil claims against individuals and entities associated with Madison Guaranty Savings & Loan Association of McCrory, Arkansas ("Madison Guaranty").¹ As part of this investigation, PM&S was asked to investigate certain issues with respect to the legal services rendered to Madison Guaranty by the Rose Law Firm of Little Rock, Arkansas. This report summarizes the scope and results of that part of the investigation.

II. NATURE AND SCOPE OF THE INVESTIGATION.

A. Sources of information.

Documents were subpoenaed from the Rose Law Firm.² The Rose Law Firm produced approximately 49 banker's boxes of documents, of which approximately 44 banker's boxes pertained to the Frost & Company litigation of 1988-1991.³ Most of the remaining documents pertained to services rendered before Madison Guaranty failed, or to services rendered to other clients on matters that fell within the scope of the subpoenas.

Documents also were subpoenaed from several dozen other persons. For a full list of subpoenaed individuals and entities, see part II of the *General*

1 The scope and purpose of the investigation is set forth in the RTC's Order of Investigation dated February 4, 1994.

2 See Appendix A to this report for a list of the subjects covered by the subpoenas to the Rose Law Firm. The documents produced by the Rose Law Firm bear the prefixes "RIC" and "RLF2". Also cited frequently below are documents obtained from the Arkansas Securities Department (prefix "ASD"), from David E. Kendall, counsel to the President and Mrs. Clinton (prefix "DKRT"), and from the RTC's Kansas City office (prefix "RTCKC"). Also cited below is the Report of Investigation dated August 3, 1995 prepared by the RTC's Office of Inspector General with respect to the Rose Law Firm. For example, a citation to "IG Report at III-15" is a reference to page 15 of volume III. Similarly, a citation to "IG Ex. III-35, at 2" is a reference to page 2 of exhibit 35 to volume III.

3 The Frost & Company action, which is the subject of a separate report, originally was styled *Madison Guaranty Savings & Loan Association, et al. v. Frost & Company*, No. 88-1193 (Pulaski Cty. Cir. Ct.). After Madison Guaranty failed, the action was removed to United States District Court, and the Federal Deposit Insurance Corporation was substituted for the plaintiffs. The action then was styled *FDIC v. Frost & Company*, No. LR-C-89-0216 (E.D. Ark.). Later still the RTC was substituted for the FDIC, and the case became *RTC v. Frost & Company*, under the same docket number. Hereinafter, the case will be referred to as "*RTC v. Frost & Co.*" The Rose Law Firm did not enter the case until after the Federal Savings & Loan Insurance Corporation was appointed conservator for Madison Guaranty on or about February 28, 1989.

Report on the Investigation of Madison Guaranty Savings & Loan and Related Entities (December 28, 1995).

Approximately 45 people have been deposed, interviewed or served with interrogatories in connection with the Madison Guaranty investigation. Of these, approximately a dozen provided information relevant to the Rose Law Firm. The interviews of Clark, Cuffman, Denton, Dover, Hawkins, Hubbell, Raglin, Selig, Strayhorn, Thomas, Thrash and Ward and the interrogatory answers of President and Mrs. Clinton are cited in this report.⁴ In addition, this report makes extensive reference to volume III of the Report of Investigation dated August 3, 1995 prepared by the RTC's Office of Inspector General and the 14 bound volumes of exhibits thereto, which include sworn statements and notes of interviews of a number of additional witnesses.

B. Issues examined.

Initially, this part of the investigation focused on work that the Rose Law Firm performed *before* Madison Guaranty's failure. There were several reasons for this. First, such work was more likely to have caused a loss for which the RTC could seek to recover in litigation. Second, the RTC's Office of Inspector General already was investigating the Rose Law Firm's alleged conflicts of interest and overbilling in connection with work for Madison Guaranty after its failure.⁵ Therefore, the initial focus was on the Rose Law Firm's work for Madison Guaranty before Madison Guaranty went into conservatorship on or about February 28, 1989. This report covers that work.⁶

The Rose Law Firm's work for Madison Guaranty primarily concerned two matters: The first matter was securities law work undertaken in 1985 and 1986, as part of an effort to buy a brokerage firm and a related effort to recapitalize Madison Guaranty by issuing preferred stock, neither of which came to fruition. The second matter was real estate work undertaken in 1985 and 1986 pertaining to the acquisition and development of the "Castle Grande" project, a real estate project owned by Madison Guaranty's subsidiary, Madison Financial Corporation, and acquired in September-October 1985 from the Industrial Development Corporation of Little Rock, or I.D.C.

⁴ Of these people, Mrs. Clinton and Messrs. Webster Hubbell, R. Davis Thomas, Jr. and Thomas P. Thrash worked at the Rose Law Firm as lawyers.

⁵ See generally *Adair v. Rose Law Firm*, 867 F. Supp. 1111 (D.D.C. 1994).

⁶ Later, PM&S was asked to review the IG Report and the Rose Law Firm's files on *RTC v. Frost & Co.* with a view toward determining whether the RTC might have a cost-effective claim against the Rose Law Firm based on its handling of that litigation. The results of that part of the investigation are covered in a separate report.

Also examined was the other work performed for Madison Guaranty. As of January 1986, there were five projects, each billed separately. Matter 1 was the stock offering described above. Matter 2 was labeled "limited partnership." Matter 3 concerned a loan in Colorado. Matter 4 was labeled "general" and seems to have covered miscellaneous corporate advice. Finally, matter 5, labeled "I.D.C.," concerned the Castle Grande project.

Before its work for Madison Guaranty, the Rose Law Firm provided services to Madison Bank & Trust Company, a state-chartered bank controlled by the McDougals. After its work for Madison Guaranty, the Rose Law Firm provided services to the Clintons in connection with their investment in Whitewater. The investigation looked briefly at each but found nothing that warranted further investigation. The Rose Law Firm's work in connection with Whitewater is described in another report. It consisted of buying back one lot out of a Mississippi bankruptcy case, repossessing certain other lots on which payments were delinquent, attempting to remedy certain corporate and tax matters as to which Whitewater was delinquent and documenting the transaction by which the Clintons sold their remaining interest in Whitewater to Jim McDougal in December 1992.

III. APPLICABLE LEGAL STANDARDS.

Congress established the RTC "to contain, manage and resolve failed savings associations."⁸ Congress gave the RTC the statutory duty of "maximiz[ing] the net present value return from the sale or other disposition of institutions . . . or the assets of such institutions . . . [and] minimiz[ing] the amount of any loss realized in the resolution of cases"⁹ The RTC fulfills this responsibility in part by bringing civil actions in appropriate cases to recover damages.¹⁰ Such cases are brought, however, only if there is reason to believe that the litigation will add to the value of the savings association's estate and thus minimize the losses caused by its failure. If there is no reason to believe that litigation will result in a net recovery, then there is no statutory basis to file a case.

7 See pages 133-38 of the report entitled *Madison Guaranty Savings & Loan and Whitewater Development Company, Inc., A Preliminary Report to the Resolution Trust Corporation* (Apr. 24, 1995) (hereinafter, "Preliminary Report").

8 Section 101(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 364.

9 12 U.S.C. § 1441a(b)(3)(C), as amended by FIRREA § 501.

10 12 U.S.C. §§ 1821(d)(2), (k), (l), as amended by FIRREA § 212.

This statutory mandate requires the determination of whether the Rose Law Firm part of the investigation has revealed potential claims that can be litigated in a cost-effective manner. Put another way, the issue is whether claims can be stated that have an expected value greater than the expected cost of litigating them.

The scope of this part of the investigation also is defined by the applicable federal statute of limitations, which encompasses claims for fraud or intentional misconduct. This statute of limitations applies to claims

arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution¹¹

Thus, for the RTC to have a civil claim, there must be proof of fraud or intentional misconduct, and there must be proof that Madison Guaranty (and ultimately the RTC, or the deposit insurance fund) suffered a loss from culpable transactions. In addition, to warrant the institution of legal proceedings by the RTC, culpability, damages and the potential defendants' assets must all be substantial enough to make the litigation cost-effective.

IV. RESULTS OF THE INVESTIGATION.

Bearing in mind these legal standards and the scope of this part of the investigation, the record does not establish that the Rose Law Firm's work for Madison Guaranty involved misconduct warranting the institution of legal proceedings against it by the RTC.

V. FACTS.

The Rose Law Firm's principal work for Madison Guaranty took place between May 1985 and July 1986. The work ceased altogether in the third quarter of 1987.¹² Before May 1985, the Rose Law Firm undertook one

11 12 U.S.C. § 1441a(b)(14)(ii), as last modified on February 12, 1994 by Public Law 103-211, Title IV, § 406, 108 Stat. 41. The alternate three-year statute, 12 U.S.C. § 1821(d)(14), expired on or about February 28, 1992 because Madison Guaranty had been placed into a conservatorship on or about February 28, 1989.

12 RLF2 03030-31; IG Ex. III-78. This is a "recap" of fees charged Madison Guaranty. The Rose Law Firm prepared the recap in approximately December 1993. It worked from "fee credit reports" because no invoices could be located. Letter from Alden L. Atkins to Bruce A. Encson, dated Oct. 31, 1995, at 5-6; letter from Alden L. Atkins to Bruce A. Encson, dated

(continued...)

assignment for Madison Bank & Trust Company, which the McDougals also controlled.

A. The Rose Law Firm's work for Madison Bank & Trust Company.

In the early 1980s, the Rose Law Firm represented Madison Bank & Trust Company in a lawsuit brought by another bank.¹³ Vincent W. Foster, Jr. and several other attorneys handled the case.¹⁴ It was litigated all the way to the Arkansas Supreme Court, where Madison Bank lost, two justices dissenting. At issue was a covenant not to compete contained in the purchase agreement by which McDougal and others had purchased Madison Bank. The covenant barred Madison Bank from operating

a branch bank or a teller's window in the Cities of Huntsville and Hindsville, the Town or Community of Marble, Madison County, Arkansas, and otherwise within a ten (10) mile radius of Huntsville, Madison County, Arkansas . . .

for 10 years.¹⁵ Approximately three months after the purchase, McDougal sought to move Madison Bank's main branch to Huntsville. The sellers sued to enforce the covenant. They prevailed both in the Chancery Court and on appeal.

Mrs. Clinton says she did not work on the case, but in 1982 or 1983 she played some role with respect to attempting to get Madison Bank to pay the Rose Law Firm's bill for the litigation.¹⁶ As she explains it,

12(...continued)

Dec. 3, 1935; RIC120795-826 ("fee credit reports" from which the "recap" was prepared).

Because of gaps and inconsistencies in the documentation, there is no definitive proof of the total fees charged Madison Guaranty by the Rose Law Firm. It appears, however, that the total was approximately \$25,000. Madison Guaranty paid the Rose Law Firm \$2,000 a month for 15 months, or \$30,000. In July 1986, Mrs. Clinton returned \$4,622.53 of that total to Madison Guaranty. RLF2 03062-63. The retainer of \$30,000 minus the refund of \$4,622.53 leaves a difference of \$25,377.47.

13 *Madison Bank & Trust v. First Nat. Bank of Huntsville*, 276 Ark. 405, 635 S.W.2d 268 (1982).

14 1G Ex. III-69, at 6

15 635 S.W.2d at 269, quoting from the purchase agreement.

16 *Id.* at 269; RTCKC33708-09.

The Rose Law Firm had first represented Jim McDougal in about 1981 with respect to litigation arising out of his purchase of the Bank of Kingston. I did not work on the 1981 matter, but I recall that Jim disputed the amount of his final bill and refused to pay the entire amount requested.¹⁷

Other evidence is consistent with this explanation. The one invoice located is dated December 23, 1981, but it covers services "subsequent to our billing dated December 23, 1981 through May 15, 1982," and the listed disbursements go through July 31, 1982. C. J. Giroir, Jr. of the Rose Law Firm sent the invoice to Jim McDougal on October 10, 1983. Implicit if not explicit in the cover letter is that Mrs. Clinton attempted to get McDougal to pay the bill but was not entirely successful.¹⁸ The Clintons' lawyer, David E. Kendall, has confirmed that Mrs. Clinton participated in a minor way in attempting to persuade Madison Bank to pay this receivable. Kendall also confirmed that Madison Bank and McDougal did not pay the Rose Law Firm's bills in full at this time, although (as described below) the matter was rectified in 1985.¹⁹

Apart from this case, no evidence has been located suggesting that the Rose Law Firm represented other McDougal-controlled entities until 1985, when it started to represent Madison Guaranty.²⁰ In 1984 and 1985, the Rose Law Firm represented parties that arguably had interests adverse to Madison Guaranty.²¹

17 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(a), at 34. Madison Bank & Trust Company was formerly known as Bank of Kingston.

18 RTCKC33708-09; RTCKC40640-41; RTCKC42763-64. The invoice came from Madison Guaranty's files. As discussed in further detail below, the Rose Law Firm itself does not have McDougal- or Madison Guaranty-related invoices this old. Other documents pertaining to the Madison Bank case include RIC107089 through RIC107528.

19 Memorandum of telephone conversation with David E. Kendall, July 25, 1995; letter from Kendall to Bruce A. Ericson dated July 27, 1995, at 1-2.

20 In May 1984, Les R. Baledge of the Rose Law Firm wrote a letter on Rose Law Firm stationery attempting to interest the Vice President for Finance of Arkansas College in an "investment opportunity." The opportunity was Campobello, a real estate development project later financed by Madison Guaranty through its subsidiary Madison Financial. Campobello is described as 4,000 acres that "[a] friend of mine, Chris V. Wade" has purchased. There is no mention of Madison Financial or Madison Guaranty. RTCKC42779.

21 The Rose Law Firm represented people named Kaufman and Gordon, to whom one Bobby Bratton owed money on a failed real estate deal. Madison Guaranty also loaned Bratton money and apparently took a second position behind Kaufman and Gordon. Bratton filed for relief under Chapter 11 (later converted to Chapter 7). *In re Bobby and Leyon Bratton*, No. HA- (continued...)

B. The Rose Law Firm's efforts to help Madison Guaranty obtain permission to operate a brokerage firm and issue preferred stock.

In 1985 and early 1986, the Rose Law Firm represented Madison Guaranty in an effort to obtain permission from Arkansas regulators to issue preferred stock and to operate a securities brokerage firm. The regulators ultimately approved the application to engage in brokerage services on condition that Madison Guaranty increase its net worth to meet the FHLBB's minimum net worth requirement. Madison Guaranty proposed to do this by issuing a new class of preferred stock, but that never happened.

The following is a chronological summary of the Rose Law Firm's work, as gleaned from its records and other sources:

In the spring of 1985, Madison Guaranty became interested in issuing preferred stock.²² On April 3, 1985, Davis Fitzhugh, a Madison Guaranty employee, contacted the Arkansas Securities Department to ask for the forms needed to do this.²³ A Securities Department employee, Charles Handley, looked at the statutes and telephoned Fitzhugh to say that he thought a savings and loan could only issue common stock and not preferred stock. Fitzhugh replied that he understood some other state-chartered savings and loans had issued preferred stock. Handley said he thought that was not the case, but he invited Fitzhugh to submit an opinion on the subject from Madison Guaranty's attorneys.²⁴ Fitzhugh then undertook a little legal research on his own and reported his findings to John Latham, Madison Guaranty's president, in a memorandum dated April 16, 1985.²⁵

21(...continued)

84-47F (Bankr. E. D. Ark.). Steve Cuffman represented Madison Guaranty. The Kaufmans and the Gordons and Madison Guaranty were creditors, and jointly sought relief from the automatic stay. It is not clear that their interests were adverse. No evidence has been located that this potential conflict (if it be that) was disclosed to or waived by Madison Guaranty when the Rose Law Firm started representing it in 1985, in the midst of the *Bratton* case.

22 No contemporaneous document explains the source of Madison Guaranty's interest in issuing preferred stock. Charles Handley, an employee of the Arkansas Securities Department, stated in 1994 that the idea "was in response to a request from the Arkansas Securities Department for MADISON GUARANTY to develop a plan to raise capital." IG Ex. III-24, at 1. The Commissioner of the Arkansas Securities Department, Beverly Bassett, attributed the directive to raise capital to the Federal Home Loan Bank Board. IG Ex. III-25, at 1.

23 RLF2 03746-48. The Arkansas Savings and Loan Supervisory Board was part of the Arkansas Securities Department.

24 RLF2 03747.

25 RLF2 03730-32.

At this point, Madison Guaranty decided to retain the Rose Law Firm in connection with this matter.²⁶ No engagement letter or other document memorializing the engagement has been located,²⁷ but Mrs. Clinton has explained the engagement:

To the best of my recollection, the president of Madison Guaranty, John Latham, who was a friend of an associate at the Rose Law Firm, Richard Massey, became interested in having Madison Guaranty issue some kind of preferred stock to raise capital. Latham had spoken to Massey about doing the related legal work. In the spring of 1985, Massey came to see me because he had learned that certain lawyers at the law firm were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill and then only if Madison Guaranty agreed to prepay a certain sum to the firm once a month to cover fees and expenses. Under such an arrangement, the firm could be assured that Madison Guaranty was staying current with regard to paying for the new work that the firm might do for it.

I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him. I agreed to go see McDougal. I visited him at his office on April 23, 1985, and told him that I understood Latham wanted Massey to do some work for Madison Guaranty, but that our firm would not let Massey proceed until the previous bill was paid and some kind of prepayment arrangement was worked out for new work the firm might do. As I recall, McDougal agreed that Massey could proceed with the work and informed me he would arrange to

26 IG Ex: III-28, at 4. It is not clear why Madison Guaranty retained the Rose Law Firm rather than its regular outside counsel, the law firm then known as Mitchell, Williams, Selig, Jackson & Tucker. The Mitchell, Williams firm had opened file no. 5615-9, entitled "Madison Guaranty - Sale of Stock," on February 6, 1985. It also had opened file no. 5615-10, entitled "Madison Guaranty - Broker-Dealer," on March 27, 1985. Both files are essentially empty. It does not appear that the Mitchell, Williams firm did much of substance with respect to either of these matters. Billings for matters 5615-9 and 5615-10 totaled \$155.35.

27 Mrs. Clinton does not know whether there was an engagement letter. Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(g)(3), at 37. At the time, the Rose Law Firm had no policy regarding engagement or retention letters, and the Firm is unaware of any retention letter for Madison Guaranty. Letter from Alden L. Atkins to Bruce A. Encson, Oct. 31, 1995, at 6. As described below, Mrs. Clinton later wrote a letter memorializing the retainer arrangement apparently entered into at this time, but Mrs. Clinton's letter is dated July 1986.

pay the past due bill. McDougal also indicated that he was agreeable to some kind of prepayment arrangement.²⁸

As of April 1985, Massey had been a lawyer approximately eight months.²⁹ He had, however, lectured on securities law at the University of Arkansas at Little Rock, and John Latham had attended that class.³⁰ Massey does not have a clear recollection of how the matter came to the Rose Law Firm, other than that he had answered a number of securities questions posed by Latham and by Patricia Heritage, and had encouraged them to retain the Rose Law Firm.³¹

Latham says that retaining the Rose Law Firm was Jim McDougal's idea:

"McDOUGAL had friends over there, he suggested we use them."

LATHAM said when asked who the friends were that it was

HILLARY RODHAM CLINTON and others.³²

Latham also said, however, that "MASSEY worked on the matter because he [Latham] had specifically asked for him to do so."³³ In any event, Madison Guaranty began advancing \$2,000 a month to the Rose Law Firm.³⁴

On April 30, 1985, the Rose Law Firm wrote to the Arkansas Securities Department in support of a proposal by Madison Guaranty to issue a class of non-voting preferred stock.³⁵ The Rose Law Firm's letter opined that an

28 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(a), at 34-35. See also IG Ex. III-69, at 6. The Clintons' lawyer, David E. Kendall, has confirmed that the "past due" matter was the Madison Bank litigation from 1981-82, described above. Memorandum of telephone conversation with David E. Kendall, July 25, 1995, at 1-2.

29 IG Ex. III-28, at 1.

30 *Id.* at 3.

31 *Id.* at 3-4.

32 IG Ex. III-29, at 1.

33 *Id.*

34 See RLF2 03062-63 (although this is not contemporaneous); Strayhorn Interview at 41-42; RTCKC41082-41103, 42797-99, 42864 (checks for September through November 1985 and January through May 1986).

35 ASD1212-13; DKRT11000701-02; IG Ex. III-1. Massey says he wrote the letter. IG Ex. III-28, at 4. The letter was signed "Rose Law Firm" because it was a legal opinion.

(continued...)

Arkansas chartered savings and loan may, under Arkansas law, issue preferred stock.

The Rose Law Firm's letter first went to Charles Handley, who continued to be of the opinion that a savings and loan could not issue preferred stock. On May 6, 1985, Handley sent the letter to the Arkansas Securities Commissioner, Beverly Bassett,³⁶ along with the suggestion that one of the Department's attorneys look into the matter.³⁷ Someone within the Department disagreed with Handley's analysis and raised another issue-- whether the stock could be non-voting, as had been suggested.³⁸ It was suggested that one of the Department's attorneys "research and draft response to Hillary."³⁹

In a letter dated May 14, 1985, Bassett replied to the Rose Law Firm's April 30, 1985 letter. Bassett concurred with the Rose Law Firm's opinion that a savings and loan could issue non-voting preferred stock.⁴⁰

35(...continued)

Id. at 5. The last sentence invited Bassett to call Hillary Rodham Clinton or Richard Massey with any questions. According to Mrs. Clinton, Massey drafted this letter; he was a securities lawyer, whereas she was not. Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatories Nos. 17(k), at 40-42, 17(b), at 35, and 17(l), at 43.

36. Ms. Bassett (now Beverly Bassett Snaffer) served as Arkansas Securities Commissioner from January 1985 to January 1991. IG Ex. III-25, at 1. Her duties included service as the Arkansas Savings & Loan Supervisor. She was appointed to her post by Governor Clinton. Id. While a law student, she had worked "full time for a year for Bill Clinton when he was serving as Attorney General." IG Ex. III-25, at 7. Before assuming office, she had practiced with Jim Guy Tucker's firm. IG Ex. III-25, at 1, 6. There she did some work for Madison Guaranty in connection with its Campobello and Maple Creek Farms projects. RTCKC30135-39. She now practices law with Wright, Lindsey & Jennings in Fayetteville. IG Ex. III-25, at 1.

37 ASD1210, ASD1216; IG Ex. III-2.

38 ASD1209; IG Ex. III-3. The author of this note may have been Nancy Jones (who is a CPA). IG Ex. III-26. See also ASD1210; ASD1373. Charles Handley confirmed this. IG Ex. III-24, at 2. A staff attorney who looked at the issue says he disagreed with the position advocated by the Rose Law Firm, but Bassett disagreed with him, and he had nothing further to do with the matter. IG Ex. III-27, at 1.

39 ASD1209.

40 RLF2 00015, RTCKC26734; ASD1211; IG Ex. III-4. The salutation of the letter was "Dear Hillary." This has been noted in the press as evidence of a personal relationship between Mrs. Clinton and Bassett. As noted above, Governor Clinton had appointed Bassett to her office but the evidence does not suggest that the Clintons and Bassett were other than business acquaintances. Bassett says, "Although I knew Hillary Clinton, and we were cordial with one another, we are not personal friends." IG Ex. III-25, at 2. See also IG Ex. III-28, at 5- (continued...)

The same day, May 14, 1985, Richard Massey sent an application to the Arkansas Savings & Loan Supervisory Board on behalf of Madison Guaranty for permission to offer brokerage services through a second-tier service corporation.⁴¹ It is not entirely clear what connection, if any, this application had with the proposal to offer preferred stock.⁴² As shall be described below, however, the two were later linked when, in August and September 1985, the Securities Department conditioned approval of the brokerage application on an increase in Madison Guaranty's net worth. Madison Guaranty proposed to increase its net worth by issuing the preferred stock.

On May 22, 1985, Charles Handley advised Beverly Bassett that Madison Guaranty's application contained a number of flaws, both technical and substantive.⁴³ The principal substantive problem was Madison Guaranty's failure to meet the FHLBB's minimum net worth requirement. In addition, the memorandum noted that the application should advise the Supervisory Board of

40(...continued)

6.

On May 23, 1985, Mrs. Clinton sent McDougal a copy of Bassett's letter. Mrs. Clinton's letter concludes: "We appreciate the opportunity to work for you and look forward to continuing success in resolving whatever questions arise as you pursue your plan for growth." RLF2 03581-82. On Bassett's letter, McDougal penned a note to John Latham: "Be sure we keep their \$2,000 a month retainer paid. Jim." RTCKC26734-35, RTCKC39623-24; IG Ex. III-5, at 2.

Also dated May 23, 1985, McDougal apparently prepared a letter to Mrs. Clinton, which read as follows: "Dear Hillary: If Joe Giroir [a partner at the Rose Law Firm] can fit it into his busy schedule, I would like to discuss a couple of banking matters with him which might be mutually beneficial. Thanks. Sincerely, Jim McDougal." RTCKC42759.

41 DKRT200358-69, 200273-200357; RLF2 03677-88; IG Ex. III-8. At the time, Madison Guaranty had only one service corporation, Madison Financial Corporation.

42 Mrs. Clinton suggests that the two were linked in the sense that the purpose of the brokerage firm was to sell the preferred stock. Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(k), at 40. See also IG Ex. III-28, at 6. That may have been one purpose, but the application suggests that McDougal had broader plans for the brokerage. ASD1237-38. So too does a handwritten memorandum from Madison Guaranty's files, which says that the brokerage will be used to sell limited partnership interests in a real estate renovation project at 12th and Main Streets, Little Rock. RTCKC41275-76. See also IG Ex. III-10, which suggests that at least one Madison Guaranty officer, Sarah Hawkins, was unclear on the business purpose of the brokerage.

43 DKRT200325-31; RLF2 03583-84; ASD1415-40; IG Ex. III-9. Although this document takes the form of a memorandum, Massey was copied. See also IG Ex. III-28, at 7. This seems to have been the custom.

the identity of the service corporation and of the identity of the brokerage being acquired; the application had identified neither.⁴⁴

On June 17, 1985, Richard Massey replied to Handley's memorandum and enclosed Madison Guaranty's amended application to engage in brokerage services.⁴⁵ The amended application included (as Exhibit A) information on the brokerage firm, Thorpe & Company.⁴⁶ Listed as Thorpe & Company's CEO was Greg Young, Madison Guaranty's Chief Financial Officer.⁴⁷ Massey's cover letter and Exhibit A also stated that Madison Financial already had acquired 100 percent of Thorpe & Company.⁴⁸

The amended application included some unaudited financial statements (Exhibits B and C)⁴⁹ and a set of calculations of Madison Guaranty's minimum net worth requirement (Exhibit D).⁵⁰ The calculations showed a net worth deficiency, as of March 31, 1985, of \$410,436.⁵¹ To meet the net worth deficiency, Massey proposed that Madison Guaranty issue preferred stock, engage in various property syndications, reduce operating expenses and engage in other "prudent" (but unspecified) activities designed to increase Madison Guaranty's net worth.⁵²

Handley commented on the amended application in a memorandum dated June 18, 1985. His memorandum noted the net worth deficiency, which

44 RLF2 03584, citing 12 C.F.R. § 563.13.

45 RLF2 03590-03676; ASD1220-1312; RTCKC41196-97; IG Ex. III-11. While this was going on, Massey also was advising Madison Guaranty personnel (chiefly Patricia Heritage) on the legal requirements for offering preferred stock. IG Ex. III-7.

46 ASD1245-85.

47 ASD1278, ASD1281; Young Interview, Nov. 2, 1995, at 5-6. Immediately before becoming president of Thorpe, Young had spent two months as a part-time salesman for Lasater & Company. ASD1281.

48 ASD1220; ASD1278-79. The acquisition had taken place in April 1985. ASD1278. Massey says that he had not worked on the acquisition. IG Ex. III-28, at 6.

49 ASD1286-ASD1300. Massey says he obtained these financial statements from Latham and did not independently review them for sufficiency or accuracy; he merely transmitted them. IG Ex. III-28, at 8.

50 RLF2 03651-61; DKRT200332-42; ASD1301-11.

51 DKRT200342; ASD1311 (subtracting the last line from the second-last line).

52 DKRT200271-72.

he said had declined to \$186,471 as of May 31, 1985.⁵³ It expressed doubt that the application could be approved until Madison Guaranty met its minimum net worth requirement.⁵⁴ Noting that Madison Financial already had purchased Thorpe & Company, it asked for confirmation of this fact and disclosure of the purchase price.⁵⁵

In a letter dated July 10, 1985, Massey replied to Handley's memorandum of June 18, 1985.⁵⁶ He confirmed that Madison Financial had purchased 100 percent of Thorpe & Company for \$6,000.⁵⁷ Massey also enclosed financial information on Madison Financial.⁵⁸ The letter concluded: "Should you have any questions, please call Hillary Rodham Clinton or me

In a memorandum dated July 17, 1985, Charles Handley questioned certain adjustments to Madison Guaranty's financial statements as of December 31, 1984 made by Madison Financial's auditors, Frost & Company.⁶⁰ The adjustments had decreased net income and retained earnings, converting net income of \$153,755 into a loss of \$74,046 and decreasing retained earnings of \$205,711 into a deficit of \$257,852.⁶¹ Handley's concern was that these adjustments had not been made in Madison Guaranty's 1985 filings with the FHLBB.⁶²

53 This is apparently a reference to ASD1302, which so states.

54 ASD1410-11; RTCKC41209-10; IG Ex. III-12.

55 ASD1411; RTCKC41210. The memorandum refers to "Thorpe" as "Thome."

56 RLF2 03518-46; ASD1381-1409; IG Ex. III-13.

57 ASD1382. The enclosed Stock Purchase Agreement, however, lists the price as \$5,000. Greg Young signed it for Madison Financial. ASD1400, ASD1406, ASD1409.

58 Massey says that Handley's memorandum raised accounting issues beyond Massey's expertise. He left the response to these issues to Latham. IG Ex. III-28, at 8. Latham, however, did not know who generated the financial statements in question. IG Ex. III-29, at 2.

59 DKRT200228-56, 200199-227; RLF2 03518-46.

60 ASD1373-80; RTCKC41240-43; IG Ex. III-14.

61 ASD1377.

62 ASD1373-74.

Massey replied in a letter dated July 25, 1985, which enclosed letters from Frost & Company and from Latham.⁶³ In essence, Massey said that the auditor's adjustments were needed to reconcile the FHLBB's regulatory accounting principles ("RAP") to Generally Accepted Accounting Principles ("GAAP") for purposes of the audited financial statements and therefore did not need to be made in the FHLBB reports, which at the time used RAP.⁶⁴ The attachment from Frost & Company simply said that the effect of the adjustments on RAP net worth was to increase it by \$101,754.⁶⁵ The attachment from Latham went into much more detail, purporting to explain all the adjustments, both for GAAP purposes and for RAP purposes.⁶⁶ The last of the five attachments to Latham's letter was another copy of a chart calculating Madison Guaranty's net worth deficiency as of March 31, 1985. The chart showed the deficiency to be \$410,436 after making these adjustments.⁶⁷

This response evidently satisfied Handley.⁶⁸ In a memorandum dated July 27, 1985, he said he accepted the minimum net worth calculations but continued to believe that approval of the brokerage application should be conditioned at least on submission of a plan to meet the net worth requirement "within a very short time."⁶⁹

On August 27, 1985, the state regulators met with Massey and decided to approve the application to engage in brokerage services on condition that Madison Guaranty develop an approved plan to improve its net worth, so as to bring itself into compliance with the FHLBB regulation by the end of the year.⁷⁰ In a letter dated September 9, 1985, Massey proposed to do this by offering

63 DKRT200148-71; RLF2 03467-90; IG Exs. III-15-17. Massey again says that these accounting issues were beyond his expertise, so he left them to Latham. IG-Ex. III-28, at 9. Latham claims to have no recollection of this. IG Ex. III-29, at 2.

64 ASD1349-50; DKRT200148-49; RLF2 03467-68.

65 ASD1351.

66 ASD1352-72.

67 DKRT200153, 200190-98; RLF2 03482-90; ASD1364-72.

68 See IG Ex. III-25, at 4.

69 ASD1347-48; IG Ex. III-18

70 See DKRT200172-73. Mrs. Clinton says she did not attend this meeting or any other meeting with the Arkansas Securities Department on this subject. Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(k), at 41. Bassett confirms this. IG Ex. III-25, at 3. So does Massey. IG Ex. III-28, at 9.

preferred stock and engaging in property syndications while reducing overhead.⁷¹ The letter suggests that, at the August 27 meeting, the parties agreed that, as of June 30, 1985, Madison Guaranty's net worth deficiency was \$842,393.⁷² This number is reflected in a letter dated September 4, 1985 from Greg Young (as CFO of Madison Guaranty) to Handley, which attaches minimum net worth calculations as of June 30, 1985.⁷³ Madison Guaranty's net worth had continued to increase, but its rapid asset growth meant that its required net worth had increased faster.⁷⁴

In a memorandum dated September 12, 1985, Handley noted the large increase in the net worth deficiency and described how he would require an opinion of counsel that the proposed preferred stock offering would meet all FHLBB requirements and would successfully raise the needed capital within the time period contemplated.⁷⁵ Apparently Handley's view did not prevail. In a letter dated October 17, 1985 from Bassett to Massey, approval of the brokerage application was conditioned: "upon Madison's meeting the Federal Home Loan Bank Board's minimum net worth requirement by December 31, 1985." No other conditions were stated.⁷⁶

For much of the rest of 1985, the Rose Law Firm proceeded to prepare the papers needed to offer preferred stock.⁷⁷ On December 9, 1985, the Securities Department asked to be advised of Madison Guaranty's progress

71 DKRT200172-73; RLF2 03492-93; IG Ex. III-19; IG Ex. III-28, at 10.

72 DKRT200172; RLF2 03492. It is implicit but not explicit that the regulators agreed to this figure. In any event, the figure is considerably above the conceded deficiency as of March 31, 1985, which was \$410,436.

73 ASD1315-23.

74 Compare ASD1311 (calculations as of Mar. 31, 1985) with ASD1323 (calculations as of June 30, 1985). Madison Guaranty's assets grew from \$49 million at the end of 1984 to \$109.7 million at the end of 1985. The FHLBB later deemed this growth "excessive." PMS0471.

75 ASD1313-14; IG Ex. III-21. The attachments to this handwritten memorandum are ASD1315-42.

76 ASD1217; IG Ex. III-22. This letter is unsigned but Bassett confirms its substance. IG Ex. III-25, at 3. The letter is not mentioned in Massey's letter of October 25, 1985 to John Latham, which encloses other materials on the proposed offering of preferred stock. See DKRT200375-400.

77 DKRT200375-400; RLF2 03695-03720; IG Ex. III-6; IG Ex. III-28, at 6. At Madison Guaranty, Latham and Young continued to debate the relative merits of a preferred stock offering and a subordinated debenture offering. RTCKC30143. Massey says he does not recall any significant work on the limited partnership proposal. IG Ex. III-28, at 10.

and reminded it of the agreed-upon December 31, 1985 deadline to meet the FHLBB's minimum net worth requirement.⁷⁸ The Rose Law Firm's response (if any) to this letter has not been located, but there are drafts of a response and of a letter dated December 19, 1985 from Massey to Latham which suggest that the preferred stock offering had been delayed and that Madison Guaranty had shifted the focus of its capital-raising efforts to property syndication and a proposed offering of subordinated debt.⁷⁹

On December 18, 1985, the day before the letter from Massey to Latham, Latham went to Dallas to meet with Rolf Coburn, Madison Guaranty's Supervisory Agent at the Federal Home Loan Bank of Dallas. Latham was accompanied not by anyone from the Rose Law Firm but by John Selig of the Mitchell, Williams law firm.⁸⁰ The principal topic of discussion was a proposed merger of a commonly owned state bank (Madison Bank & Trust Company, although this is not stated⁸¹) with Madison Guaranty. The FHLB-Dallas' memorandum of the meeting states that Madison Guaranty "currently has a net worth deficiency of approximately \$1,404,000 . . ."⁸² After explaining why a merger would not be attractive, the memorandum then discussed Madison Guaranty's net worth and how it might be improved:

The association is presently faced with a significant net worth deficiency. Mr. Latham informed us of the association's plans to submit an application requesting approval to issue approximately \$3,000,000 in subordinated capital notes pursuant to [12 C.F.R.] Section 563.8-1 for inclusion in its net worth. The Association also intends to submit an application for approval to issue preferred stock, approximately 30,000 shares. Dave Bradley

78 DKRT200374; RLF2 03694; ASD1862.

79 DKRT200371-73; RLF2 03691-94. On December 2, 1985, the Mitchell, Williams firm opened its file 5615-14, entitled "Madison Guaranty - Subordinated Debt." In January 1986, Madison Guaranty signed an engagement letter retaining Mitchell, Williams to handle the public offering of such debt for a flat fee of \$32,000 plus disbursements. The firm began preparing an offering circular. Work on the offering continued at least into June 1986. In all, the work filled files just under three inches thick. Latham confirms that Mitchell, Williams rather than the Rose Law Firm handled the subordinated debt project. IG Ex. III-29, at 1-2.

80 ASD1852-53.

81 According to minutes of Madison Guaranty's board of directors dated September 19, 1985, such a merger was contemplated, and the Mitchell, Williams firm had been retained to handle the matter. The merger never occurred.

82 ASD1852. Bassett apparently saw this memorandum, although she placed the meeting in January 1986. IG Ex. III-25, at 4.

[another Supervisory Agent] briefly discussed eligibility requirements for subordinated debt and preferred stock applications.³³

Five days later, on December 23, 1985, Latham telephoned or visited the Arkansas Securities Department, apparently without counsel; at least nobody else is mentioned in Charles Handley's extensive notes of the conversation.³⁴ Latham told Handley that Madison Guaranty's broker-dealer application was not complete, that Madison Guaranty would show a net profit for 1985 of between \$500,000 and \$1 million, that in light of this, Madison Guaranty planned to offer subordinated debt rather than preferred stock, that Latham had met with Supervisory Agent Coburn at the FHLBB in Dallas to discuss the requirements for a debt offering and that Madison Guaranty would be approximately \$1 million short of its net worth requirement as of December 31, 1985.³⁵

The two men apparently disagreed as to whether Madison Guaranty could start broker-dealer operations without first increasing its net worth. Handley said he understood that Madison Guaranty had to meet its net worth requirement before it could commence broker-dealer operations. Latham said this was not his understanding but nevertheless he would agree to this condition.³⁶

There is little documentary evidence to suggest that the Rose Law Firm did much after mid-December 1985 with respect to the proposed stock offering. The Rose Law Firm no longer has invoices this old.³⁷ There is one set of five matter-level invoices, for January 1986. The invoices for matters 1, 2 and 4 read as follows:³⁸

83 ASD1852-53.

84 RLF2 00016-22; ASD1343-46; IG Ex. III-23. The ASD version includes a note on a Post-itTM that reads: "Charles--Good--thanks for handling. BB 12/26/85." ASD1343.

85 RLF2 00018-19; ASD1344-45.

86 RLF2 00019; ASD1344. See also RLF2 00004, confirming this interpretation. Bassett agrees with Handley and says that Madison Guaranty "forfeited" its approval of the broker-dealer subsidiary by not meeting the December 31, 1985 deadline. IG Ex. III-25, at 3.

87 Vinson & Elkins, counsel to the Rose Law Firm, has told us that the Rose Law Firm can find no invoices covering this or any other work for Madison Guaranty. Letter from Alden L. Atkins to Bruce A. Ericson, Oct. 31, 1995, at 3-6.

88 Matter 3 pertained to a loan in Colorado known as the Bibler-Golden loan. See RLF2 03084-03105, 03122-51. This appears to be loan documentation and closing work. It has no known connection to the stock offering and brokerage work; in any event, the invoice reflects minimal work, apparently totaling less than one hour. Matter 5 pertained to Castle Grande and is discussed below.

For legal services rendered through January 30, 1986 by H. R. Clinton, W. H. Kennedy, R. Massey and R. Donovan:

Matter: 1 - Stock Offering

Revise agreements; begin drafting of minutes and offering circular; revise offering circular; conference with J. Latham and D. Fitzhugh; research Arkansas Securities and FHLB debt regulations; revise minutes; review and revise offering materials; conferences with S. Hawkins, J. Kennedy, P. Jones, S. Ward, H. Clinton, J. Latham and D. Fitzhugh; draft and revise letter to C. Handley.⁸⁹

For legal services rendered through January 30, 1986 by H. R. Clinton and R. Massey:

Matter: 2 - Limited Partnership

Telephone conferences with J. Latham; review "business" section of memo; meeting with J. Latham, B. Bassett and C. Handley; preparation for meeting; conferences with D. Fitzhugh and L. Baledge regarding syndication; draft and revise letter to C. Handley.⁹⁰

For legal services rendered through January 30, 1986 by H. R. Clinton and R. Massey:

Matter: 4

General

Conference with J. Latham regarding capital plans; research ASLB and FHLB laws; conference with P. Heritage regarding mass market of stock; telephone conference with S. Hawkins regarding proposed conference with FHLB supervisor; business plan; review letter to Barnett; telephone conferences with J. Latham; preparation of auditor's request/response letter; related research;

89 RTCKC42751; IG Ex. III-32.

90 RTCKC42750; IG Ex. III-31.

reservation of Madison Capital Corporation name; correspondence to Secretary of State.⁹¹

The fees for all this work total \$4,001.50. There is no breakdown by timekeeper.

There also is an invoice dated April 7, 1986 for services through March 31, 1986 on matter 4, "general." The charge for services totals \$12.50 for one telephone conference with John Latham. The subject discussed and the attorney who provided this service are not listed.⁹²

The Rose Law Firm's counsel told us that they had not seen these invoices until we provided copies. Documentary evidence supports this. It shows the Rose Law Firm's management could find no invoices and therefore attempted to reconstruct the firm's work from other sources. The reconstruction prepared by the Rose Law Firm in the 1990s suggests that Mrs. Clinton and Massey spent some time on this matter in the first several months of 1986.⁹³

Ultimately, the stock offering did not take place,⁹⁴ nor did Madison Guaranty receive permission to engage in brokerage services.

C. The Rose Law Firm's work on the Castle Grande project.

1. The acquisition of Castle Grande.

a. Introduction.

Between August and October 1985, while the Rose Law Firm was representing Madison Guaranty in the stock and brokerage matters described above, Madison Financial acquired its Castle Grande real estate project. Of

91 RTCKC42748.

92 RTCKC42756.

93 A note, apparently written by Herb Rule, states: "We could not find anything for Madison 83, 84, 85, 86 . . . There was a client Madison Guaranty set up but we do not show any activity. HCR" A "final recap" of "fees from Madison Guaranty Savings & Loan" shows activity on "Madison Guaranty/stock offering" through April 1986, but some of the entries combine this with work on "IDC," a separate matter described below. The fees from January through April 1986 totaled \$6,977.25. A little over half, \$3,608.75, is attributed to Mrs. Clinton. RLF2 03027. As noted above, this final recap was created in December 1993, working from documents other than invoices. See n.12 above.

94 IG Ex. III-24, at 2.

Madison Financial's investments, Castle Grande was one of the bigger losers, costing the institution an estimated \$3.8 million in principal and interest.⁹⁵

Castle Grande encompassed approximately 1,050 acres of land in southern Pulaski County (Little Rock).⁹⁶ Madison Financial and a consultant named Seth Ward purchased the land from a company called Industrial Development Corporation of Little Rock ("IDC"). Seth Ward⁹⁷ is the father-in-law of Webster Hubbell, then a partner in the Rose Law Firm. The Rose Law Firm has no apparent connection to much of Castle Grande's history, but it did play a role in Madison Financial's acquisition of the property. Therefore, this report focuses on that acquisition. In particular, it focuses on Seth Ward's compensation and on his temporary ownership of portions of Castle Grande.

As shall be described in part VI.C below, the principal issues can be described as follows:

First, was Ward a bona fide purchaser, or simply a straw man or nominee for Madison Financial?

~~Second, if Ward was a straw man or nominee, was the acquisition fraudulent, or did it intentionally violate an Arkansas regulation that limited the size of the investment that Madison Guaranty could make in Madison Financial--a regulation that management thought prevented Madison Financial from buying all of Castle Grande?~~

Third, if fraud or intentional wrongdoing on the part of Madison Guaranty or Madison Financial did occur, was the Rose Law Firm responsible for the wrongful aspect of the acquisition and, if so, does it have any liability to the RTC?

95 Castle Grande is the subject of another report entitled *A Report on Certain Real Estate Loans and Investments Made by Madison Guaranty Savings & Loan and Related Entities* (Dec. 19, 1995) (hereinafter, "Castle Grande Report").

96 Castle Grande consisted of mostly undeveloped land located 15 miles south of Little Rock at the intersection of Highway 65/167 and 145th Street. IDC had owned the land since 1974. IDC had financed its acquisition through several Little Rock banks, including Union National Bank of Little Rock, Worthen Bank and Trust Company and First Commercial Bank, N.A. By 1985, these creditors were pressuring IDC to dispose of the property.

97 Ward sued Madison Guaranty in 1987, after McDougal had left. *Ward v. Madison Guaranty Savings & Loan Financial Corporation*, No. 87-7580 (Pulaski Cty. Cir. Ct.) (hereinafter, "*Ward v. Madison*"). Ward sought to recover almost \$400,000 in commissions that he said he had earned in connection with Castle Grande. The trial transcript and discovery from this case are cited frequently below. The trial transcript is cited as "*Ward v. Madison R.T.*" Depositions are cited by the name of the deponent, e.g., "Ward Deposition."

The role of the Rose Law Firm is difficult to delineate. Some documents no longer exist. Memories have faded. The relevant aspect of the acquisition--the terms of the deals between McDougal and Ward--are complex and were disputed in litigation. For these reasons, it is best to start by describing the acquisition of Castle Grande without much reference to the Rose Law Firm. Later, in part VI.C below, the evidence as to the Rose Law Firm's role in this acquisition will be analyzed.

b. The negotiations with IDC.

In the acquisition of Castle Grande from IDC, Seth Ward served as the principal negotiator for Madison Financial.⁹⁸ Ward, who was then 65 years old and semi-retired, had gone to work for Madison Financial in May 1985.⁹⁹ For \$25,000 a year plus commissions, Ward was given the task of looking for real estate that Madison Financial might buy and develop.¹⁰⁰

A few months after hiring Ward, McDougal asked him if he knew anyone connected with IDC. At the time, McDougal was not contemplating an acquisition; instead, he owned some landlocked property just south of Castle Grande and wanted an access easement. Ward knew the head of IDC (then Everett Tucker¹⁰¹) and went to see him. Tucker had no interest in selling an easement but offered the entire property for sale at \$5.5 million.¹⁰² McDougal had no interest in anything that big,¹⁰³ but Ward continued to negotiate and ultimately got the price down to \$1.75 million.¹⁰⁴

What happened next is not entirely clear. According to Ward, McDougal said he still was not interested in purchasing anything that big.

98 *Ward v. Madison* R.T. 7-13.

99 *Ward v. Madison* R.T. 5-7.

100 *Id.* Madison Financial had hired Ward to represent Madison Guaranty in real estate deals. Ward received \$25,000 a year plus 10 percent of any profits on the sale of properties he arranged. IG Ex. III-35, at 2.

101 Tucker died, and was succeeded by R.A. "Brick" Lile, who has since died.

102 *Id.* at 7-8; Ward Deposition at 16.

103 "After that meeting, Ward said McDougal became very abrasive with him and told him not to bring any big deals in. That they do not want any big deals. They are only working on little deals." Seth Ward Interview, Dec. 9, 1986, Borod & Huggins Report, IG Ex. III-54, at 125.

104 Ward Deposition at 16-18. *Ward v. Madison* R.T. 12.

Q. All right, sir. Now, you have a contract for the purchase and sale of the property for \$1,750,000. Was Madison Financial able to carry that transaction?

A. When I presented it to Mr. McDougal and told him I thought it was an exceptionally good purchase, he told me that Madison was unable to purchase that. I told him, "Well, if y'all aren't going to purchase it, I will."

Q. What happened after that?

A. He [McDougal] asked me [Ward] if I would participate with him and have Madison purchase that amount that they could afford to purchase and I purchase the balance.¹⁰⁵

This makes it sound as though the property always was to be divided between Ward and Madison Financial. Other evidence, including other portions of Ward's own testimony, casts some doubt on this. For a man who says he wanted all of the property, Ward seemed fairly casual about its division. Asked about how the property was divided, Ward testified:

Q. How did you structure the deal, as to who would buy which portions of property? How did you and Mr. McDougal decide that?

A. Well, I don't know how we came to it. I know what we did.¹⁰⁶

Hubbell, in contrast, says that Ward told him that the idea of having Ward buy part of the property came later:

MR. ERICSON: Yes, '85.

You mentioned a moment ago that your father-in-law told you at least a little something about this transaction.

Q. To the best of your recollection, what did he tell you in the time period August, September, October, 1985 about this transaction?

105 *Ward v. Madison* R.T. 12-13.

106 *Ward* Deposition at 19. Ward was 65 years old at the time of the transaction and 74 years old at the time of his interview. The transcript of *Ward v. Madison* shows that Ward's memory is not what it once was. Repeatedly at trial he contradicted his deposition testimony. E.g., *Ward v. Madison* R.T. 39-43, 45-46, 58-61, 89-91.

A. My understanding initially was that Madison was going to buy the entire parcel. And then at some point, I learned that it was structured so that Madison bought part, and my father-in-law bought part. And then Madison lend him the money to buy that part, but he was still going to be paid, as it was sold, a commission.

Q. When you say you learned these things, would these be things that you learned from your father-in-law?

A. Yes.¹⁰⁷

Other evidence also suggests that the division of the property between Madison Financial and Ward occurred in the midst of negotiations and was not a condition of the deal from the outset.¹⁰⁸ The files of IDC's lawyer show that the lawyers began exchanging drafts of the paperwork in August 1985.¹⁰⁹ The initial drafts do not refer to any purchaser other than Madison Financial, although they do permit Madison Financial to assign its rights to an "affiliate."¹¹⁰ For a while, it appeared as though the deal would close quickly on this basis. A meeting of IDC's shareholders to approve the transaction was set for August 19, 1985.¹¹¹ Draft minutes of Madison Financial purportedly reflect approval of the transaction on August 20, 1985, with all the land to be sold to Madison Guaranty (or affiliate) for \$1.75 million.¹¹²

107 Hubbell Interview, Dec. 27, 1995, at 14:10-26.

108 Thus, Hubbell testified before the Senate Special Committee on Whitewater: "I remember that initially Madison was going to acquire it all and then the transaction changed to where my father-in-law acquired part of it and Madison acquired part of it." Transcript of Hearing Before the United States Senate Committee on Banking, Housing and Urban Affairs Special Committee to Investigate the Whitewater Development Corporation and Related Matters (hereinafter, "Senate Hearing Transcript"), Dec. 1, 1995, at 102:22-24.

109 E.g., IG Ex. III-40, at 9-12, 16-70. Negotiations must have begun earlier. By July 30, IDC's board of directors had met to discuss a proposed sale of the land to Madison Guaranty. Thomas P. Thrash of the Rose Law Firm sent Darrell Dover a draft agreement on August 9, 1985 and his associate R. Davis Thomas, Jr. sent a revised draft on August 12, 1985. *Id.*

110 IG Ex. III-40, at 16-17 (draft prepared by the Rose Law Firm).

111 IG Ex. III-40, at 15.

112 IG Ex. III-36. As with all Madison Financial minutes after December 1984 (as opposed to Madison Guaranty minutes and earlier Madison Financial minutes), these are of doubtful authenticity and may have been drafted long after the fact. See IG Exs. III-149, at 12-15, III-151. On this particular draft, however, someone has written "Pat [presumably Pat Hentage, (continued...)]

Then, at some point between mid-August and mid-September 1985, the documentation of the transaction changed.¹¹³ As ultimately consummated, Madison Financial bought a portion of the land for \$600,000 and Seth Ward bought the remainder for \$1.15 million; thus, signed Madison Financial minutes of September 12, 1985 approved a \$600,000 acquisition.¹¹⁴

As between IDC and the buyers, the progress of the sale was simple and straightforward. On September 13, 1985, IDC, Madison Financial and the consortium of Little Rock Banks executed an "Agreement" whereby Madison Financial (or, at its option, an "affiliate") agreed to purchase Castle Grande for \$1,750,000.¹¹⁵ The papers were sent to the title company, which started to get ready for the closing. At some time in late September, probably after September 23, the title company was told that Seth Ward was to be the assignee.¹¹⁶ On October 4, 1985, the land was conveyed, and on October 8, 1985, the warranty deeds were recorded.¹¹⁷

c. The deal between McDougal and Ward.

In contrast to the simplicity of the deal with IDC, the terms of the deal between McDougal and Ward are ambiguous, were sharply disputed and

112(...continued)

now Hays] did not create this document. She found + pulled from minutes book --" id.

Thrash's timesheet for August 20, 1985 reads: "Prepare corporate resolutions; telephone conf w/Seth Ward." RIC118697. Thrash says he could have prepared this resolution; it appears similar to the form he used. Thrash Interview, Dec. 1, 1995, at 14:23-15:12, 23:5-18.

113 Thrash and Thomas say they have no independent recollection of their work. Thrash Interview, Dec. 1, 1995, at 8:17-9:3, 10:22-11:2. Thomas Interview, Dec. 19, 1995, at 6:23-7:4, 8:13-17. Their timesheets show no work in September 1985 on drafts of the agreement. RIC118697-98 (Thrash has no entries between August 20, 1985 and September 30, 1985); RIC118728-29 (Thomas has no entries between August 16, 1985 and October 18, 1985). Thrash does not think he ever saw the agreement after August 20, 1985. Thrash Interview, Dec. 1, 1995, at 26:26-28:23.

114 IG Exs. III-36, III-37. Thrash said he had never seen these minutes before. Thrash Interview, Dec. 1, 1995, at 25:21-26:7.

115 IG Ex. III-38. Seth Ward signed this agreement on behalf of "Madison Guaranty Savings & Loan Association" even though Madison Financial, and not Madison Guaranty, was the party to the agreement.

116 E. A. Bowen, president of Beach Abstract, the title company that closed the transaction, says he does not think the transaction was restructured to make Ward a vendee of a portion of the Castle Grande property until after September 23, 1985. IG Ex. III-43, at 1.

117 IG Exs. III-44, III-45, III-46.

resulted in litigation that lasted for years. Those terms were set forth in five documents dated in September and October 1985, as well as in a host of documents executed the following spring. The five documents from September and October 1985 are:

<u>Date</u>	<u>Document</u>
Sept. 3, 1985	Memorandum from McDougal to Ward dividing the land and giving Madison Financial an option to buy Ward's part.
Sept. 13, 1985	Assignment of real estate to Ward.
Sept. 24, 1985	First letter from Ward to McDougal, countersigned by McDougal; marked "void"; gives Ward a commission; gives Madison Financial an option but places no price on the option; does not give Ward any real estate to keep after exercise of the option.
Sept. 24, 1985	Second letter from Ward to McDougal; backdated to Sept. 24, 1985; gives Ward a commission; pays Ward \$35,000 for the option; gives Ward 22.5 acres to keep after exercise of the option.
Oct. 15, 1985	Loan of \$1.15 million from Madison Guaranty to Ward, purportedly to finance Ward's acquisition of his part of Castle Grande, entered into 11 days after IDC sold the real estate to Ward and Madison Financial.

Each of these documents will be discussed in turn below.

The September 3, 1985 memorandum from McDougal to Ward: This memorandum, written on Madison Guaranty stationery, is succinct:

September 3, 1985

TO: Seth Ward
FROM: Jim McDougal
SUBJECT: Industrial Property

The following is a summary of our conversation of last Friday:

1. You will purchase all land north of 145th Street and the utility plants for \$1,150,000.
2. Madison will take an option for 270 days to purchase those properties for \$1,187,000, plus accrued interest on the loan you will make to purchase the property. If any tax consequences should arise for you from the transaction, Madison will pay those taxes.
3. ~~You will have the present IDC manager collect the rent and utility payments and forward the net proceeds to Greg Young here. Greg will then apply this income monthly to the accruing interest on your loan.~~
4. Madison will provide you with a letter requiring that you drive a prestigious automobile while you are in charge of this project.

JM/ss¹¹⁸

Ward says he deemed this September 3 letter "totally inadequate" but did not explain why.¹¹⁹ In testimony given in 1988, his only detailed criticism was of the "prestigious automobile" provision.¹²⁰

The September 13, 1985 assignment from Madison Financial to Ward: This is even shorter than the September 3 memorandum. A crudely

118 SW1-004, Def. Ex. 31 in *Ward v. Madison*.

119 Ward Deposition at 48-49.

120 *Id.* at 49-50. Ward heaped scorn on the notion that he had angled for a "prestigious automobile"; he said McDougal pressed him to take the car because "Everyone down there drove Mercedes and he had one he was trying to sell me." *Id.* Although Ward did not mention it, he ended up driving a Mercedes-Benz that he bought from McDougal with a \$40,000 loan from Madison Guaranty. Denton Deposition at 30-31.

drawn one-page document, it assigns to Ward the rights belonging to Madison Financial under the agreement executed September 13, 1985 with IDC to purchase

... [a]ll real estate and [sic] improvements north of 145th Street including water and sewer systems less 6.6 acres which is leased to the [sic] Levi Strauss ...¹²¹

The two letters dated September 24, 1985: Both of these letters were signed by Ward and McDougal. Both further detail the terms of the arrangements between them with respect to commissions, the option, taxes and (in the second version) a specific 22.5-acre parcel. There are material differences between the two letters.¹²² Ward says that the first of the two letters actually was written on September 24, 1985, while the other was backdated to that date.¹²³ Neither was found in Madison Guaranty's or Madison Financial's files.¹²⁴

The first of the two September 24 letters was later marked "Void."¹²⁵ In his deposition, Ward testified that McDougal drafted this letter even though it purports to be from Ward to McDougal.¹²⁶ Ward signed this letter without studying it carefully:

He wrote this and we both signed it, but after the fact. I'm not a lawyer and I don't—I don't like the fine print and I don't normally study what I'm signing carefully enough; but shortly after I signed this, I recognized that this still did not cover our agreement, so I

121 IG Ex. III-39; Pl. Ex. 38 in *Ward v. Madison*. See *Ward v. Madison* R.T. 14-15. Thrash and Thomas do not recall having even seen or worked on this assignment. Thrash Interview, Dec. 1, 1995, at 26:1-15. Thomas Interview, Dec. 19, 1995, at 19. It seems highly unlikely that any competent lawyer would have drafted an assignment this crude and full of typographical errors.

122 Appendix B to this report contains a red-lined version of the two letters.

123 The first letter, marked void, is SW1-008 through SW1-009; Pl. Ex. 5 in *Ward v. Madison*. The second letter is RIC109218-19; IG Ex. III-134, at 4-5; SW1-005 through SW1-007; Pl. Ex. 4 in *Ward v. Madison*. Regarding the backdating, see Ward Deposition at 51-53. As Denton said, "dates aren't sacred at Madison." Denton Deposition at 85.

124 *Ward v. Madison* R.T. 196.

125 Ward Deposition at 50, discussing SW1-008 through SW1-009.

126 "Q. All right. So Mr. McDougal wrote a letter to himself? A. Uh-huh. He did that several times." *Id.* At trial, however, Ward was less sure who prepared this letter. He testified: "I honestly don't recall. I imagine it was somebody with Jim McDougal's staff." *Ward v. Madison* R.T. 36.

wrote [the second September 24 letter]. And I said, "Jim, this is the agreement that we've agreed to; read it and see if that's not, in fact, the agreement." He did and he agreed it was the agreement, and so we signed [the second letter] and voided [the first letter].¹²⁷

Ward said the second September 24, 1985 letter is the definitive version. It covers five topics: Ward's purchase of a portion of the Castle Grande property and Madison Guaranty's financing of that purchase; Madison Guaranty's option to buy back that land, less 22.5 acres; joint efforts to sell portions of the property and the application of the proceeds to Ward's debt; Ward's commissions on any sale of the property; and taxes.¹²⁸ The terms may be summarized as follows:

1. Ward will take all the property north of 145 Street plus the water and sewer improvements (some of which were south of 145th Street) pursuant to the September 13, 1985 assignment.¹²⁹ In turn, Madison Guaranty will finance 100 percent of the purchase price, with the financing secured by the property.

2. Madison Guaranty will pay Ward \$35,000 for a 270-day option to purchase part or all of the property (excepting the 22.5-acre parcel) for a pro rata amount equal to at least the principal still owed on the note plus all accrued interest.¹³⁰ (The 22.5-acre parcel is noteworthy because the parties' intentions with respect to it were sharply disputed in *Ward v. Madison*.)

3. Madison Financial and Ward will attempt to sell parcels of Castle Grande as quickly as possible. The sale price of any parcel sold "will be mutually approved by [Ward] and Madison Financial Corporation."¹³¹ The proceeds less Ward's commissions will be applied to his debt to Madison Guaranty. At Madison Financial's discretion, any particular parcel may be deeded back to Madison Financial prior to a sales transaction.

127 *Id.* See also *Ward v. Madison* R.T. 15-17.

128 The question of who prepared this letter is discussed in part VI.C below.

129 RIC109218-19; IG Ex. III-134, at 4-5. The water and sewer facilities later were sold to Castle Sewer and Water Company, which was established in December 1985 by Jim Guy Tucker and R. D. Randolph. See Castle Grande Report at 19-23.

130 RIC109218-19; IG Ex. III-134, at 4-5.

131 RIC109218; IG Ex. III-134, at 4. It is not entirely clear whether this provision applies to all the property or only the portion being acquired by Ward subject to the option. The parties later acted as though it applied only to Ward's portion of the property.

4. Ward will receive commissions on all sales of Castle Grande property, regardless of whether Ward or Madison Financial owned the parcel in question and regardless of who secured the sale. The rate of the commission, however, will depend on whether the property was intended for industrial use, in which case the commission will be 10 percent, or residential use, in which case the commission will be 4 percent.¹³²

5. Madison Financial will pay all "taxes, special assessments, dues, insurance premiums, etc." during the 270 days of the option.

According to Ward, the main differences between the two letters were that the first did not specify adequately the \$35,000 payment for the option, and did not grant Ward the 22.5-acre parcel that he wanted.¹³³

As noted, the second letter was backdated to September 24, 1985; Ward could not recall exactly when it was drafted or executed.¹³⁴ The underlying purchase agreement with IDC had been signed on September 13, 1985. The land was conveyed on October 4, 1985, and the warranty deeds were recorded on October 8, 1985.¹³⁵

The October 15, 1985 loan: Not until October 15, 1985, 11 days after the purchase of Castle Grande closed, did Madison Guaranty loan Ward the purchase price. Evidently Madison Guaranty financed the sale on its own before documenting the loan to Ward. The loan, once documented, showed that Ward had borrowed the entire purchase price of \$1,150,000 on a non-recourse basis; Ward put no money of his own at risk.¹³⁶

2. Post-acquisition developments.

Developments after the acquisition of Castle Grande shed further light on the question of whether Seth Ward was a straw man or nominee. Most of the developments stemmed from Madison Financial's inability to pay Ward the commissions contemplated by the second September 24, 1985 letter.

¹³² RIC109219; IG Ex. III-134, at 5.

¹³³ *Ward v. Madison* R.T. 18-20. At the time of trial, the 22.5 acres was valued at somewhere between \$170,000 (Madison Guaranty's estimate) and \$400,000 (Ward's contention). Madison Guaranty presented an appraiser who testified to the figure of \$170,000. *Id.* at 170-79.

¹³⁴ *Ward v. Madison* R.T. 17-18.

¹³⁵ IG Exs. III-44, III-45, III-46.

¹³⁶ IG Ex. III-48; *Ward v. Madison* R.T. 24-25.

Shortly after the closing, Madison Financial began to sell portions of Castle Grande. Many of the sales were to insiders; almost all were financed by Madison Guaranty.¹³⁷ The proceeds of sales of Ward's portion of Castle Grande were applied to his debt. By February 1986, these sales had reduced Ward's debt to approximately \$70,000, if not less.¹³⁸ The major portion of the proceeds came from the sale of portions of Ward's Castle Grande holdings to former Senator J. William Fulbright and to Castle Water and Sewer Company.¹³⁹

After February 1986, relations between Ward and McDougal deteriorated, in large part because McDougal could not pay Ward his commissions.¹⁴⁰ McDougal responded by entering into a complex new series of agreements with Ward. The three main elements of these agreements were: Ward's commissions, estimated to be in excess of \$300,000; the \$70,000 remaining on Ward's mortgage; and the 22.5 acres. These three elements were intertwined in ways that the parties later disputed in litigation.

For present purposes, it is not necessary to unravel all these elements, but one issue is significant: the treatment of the 22.5 acres.¹⁴¹ Ward said it was additional compensation to him, above and beyond the \$300,000+ in commissions and the \$35,000 option payment. Madison Guaranty, in contrast, said the 22.5 acres never was intended to end up in Ward's hands but had been carved out for him in an attempt to make the \$300,000 in commissions taxable not as ordinary income but as long-term capital gains.

¹³⁷ See Castle Grande Report at 6-29.

¹³⁸ This was a disputed issue in *Ward v. Madison*. Ward said he thought the proceeds had paid off his debt in full; Madison Guaranty, however, said that \$70,000 was still owing. Ward signed a new promissory note in that amount but it was later released when additional property sales netted another \$70,000. *Ward v. Madison* R.T. 26, 32-33, 48, 51-54, 84-85.

¹³⁹ *Ward v. Madison* R.T. 122-25. Ward's mortgage loan was reduced by \$450,000 from the Castle Sewer and Water transaction and approximately \$680,000 from the Fulbright transaction. *Id.*

¹⁴⁰ McDougal's world began to fall apart in the spring of 1986. His debts became increasingly burdensome. As a consequence, he and his wife entered into increasingly questionable transactions, such as the \$300,000 loan from David Hale's Capital Management Services, Inc. At the same time, the FHLBB examiners entered Madison Guaranty to begin an examination that would last six months and lead to McDougal's final ouster from the institution.

¹⁴¹ Ward described this as "[c]hoice property," "the prize property, the prize location." Ward Deposition at 84-85.

By the spring of 1986, portions of Castle Grande had been sold for a total of approximately \$3.8 million.¹⁴² Ward asked to be paid his \$35,000 option and his commissions, which he calculated to total somewhat in excess of \$300,000.¹⁴³ Ward needed the money for undisclosed personal reasons, so he pressed the matter.

On March 31, 1985, Madison Guaranty loaned Ward \$400,000, \$100,000 of which he returned within a week or so.¹⁴⁴ To counterbalance the remaining \$300,000 plus the \$70,000 allegedly still owing on the note that replaced the original mortgage, Ward purported to loan Madison Financial \$300,000 plus another \$70,943.47, although no money actually changed hands.¹⁴⁵ This was done, it is said, so that there would be some written evidence for the FHLBB examiners to see of Ward's entitlement to the commissions.¹⁴⁶

Ward released Madison Financial's \$70,943.47 note after Madison Financial released Ward on his \$70,000 note.¹⁴⁷ The fate of the twin \$300,000 notes and the 22.5 acres is less clear, as Ward's testimony conflicted with Latham's.¹⁴⁸

Ward testified that he did not pay back his \$300,000 note; instead, he gave Madison Guaranty a deed in lieu of foreclosure on the 22.5-acre parcel.¹⁴⁹ As for the note Ward had received from Madison Financial, Ward

142 *Ward v. Madison* R.T. 29-31. Madison Guaranty had financed virtually all of this; many of the sales later fell through and Madison Guaranty had to take back the real estate.

143 At trial, Ward ultimately sought \$391,840 less a \$93,000 set-off that he conceded. *Ward v. Madison* R.T. 31-33.

144 Def. Ex. 1 in *Ward v. Madison*. The \$400,000 was secured by Ward's 22.5-acre parcel. *Ward v. Madison* R.T. 29, 49-52, 81-82. Hubbell does not know why Ward wanted the money; he speculates that taxes may have been the reason. Hubbell interview, Dec. 27, 1995, at 24:8-25:13.

145 Pl. Ex. 19; Def. Ex. 35-36 in *Ward v. Madison*. The loans, dated April 7, 1986, were due June 6, 1986. Hubbell recalls Ward talking about this loan but cannot remember its rationale. Hubbell interview, Dec. 27, 1995, at 25:14-26:1.

146 *Ward v. Madison* R.T. 27-29, 49-54, 101-02, 114-15.

147 *Id.* at 85-86 and Def. Ex. 37.

148 McDougal did not testify. Nobody knew where he had gone. Ward said, "Somebody told me he was in Mexico. I don't know where he is." Ward Deposition at 116.

149 *Ward v. Madison* R.T. 32, 81-84.

said that it remained outstanding, providing additional evidence of the commissions and option that had never been paid.

Latham agreed in part and disagreed in part. He agreed that Madison Financial had released Ward from personal liability on his \$300,000 note, leaving Madison Financial with recourse only to the 22.5-acre parcel.¹⁵⁰ He knew nothing about Ward giving Madison Financial a deed in lieu of foreclosure because by then Latham had left Madison Guaranty.¹⁵¹ As for Madison Financial's \$300,000 note to Ward, Latham thought it had been canceled and nothing further was owed Ward, but Latham had to admit that, so far as he knew, the note had never been demanded or returned.¹⁵²

Further complexities blurred the evidence regarding the relationship (if any) between the commissions and the 22.5 acres. On May 1, 1986, for \$1,000, Ward gave Madison Financial an option to buy the parcel for \$400,000.¹⁵³ The parties disagreed about whether this option had anything to do with Ward's commissions. As noted, Ward took the position that the acreage represented additional consideration to him, above and beyond his \$300,000 in commissions, and that the option had nothing to do with this.¹⁵⁴ Madison Guaranty (through Latham), in contrast, said that the 22.5-acre parcel simply secured the commissions, with the intention being that Madison Guaranty would exercise the option and thereby pay Ward the commissions owed.¹⁵⁵ In other words, most of the \$400,000 ostensibly paid for the 22.5 acres really would be payment of the commissions.

Latham's testimony could not be reconciled with the second September 24, 1985 letter, a point Latham conceded.¹⁵⁶ Madison Guaranty's

150 *Ward v. Madison* R.T. 103-05, discussing Def. Ex. 4.

151 *Ward v. Madison* R.T. 109. See Pl. Ex. 35-37 in *Ward v. Madison*.

152 *Ward v. Madison* R.T. 112-14.

153 *Ward v. Madison* R.T. 55-56, 101-04; Def. Ex. 3. Counsel for the Rose Law Firm states that this option was created at the Rose Law Firm and that the letter "g" in the word processing code identifies the author as Mrs. Clinton. On December 21, 1995, the RTC propounded a set of interrogatories to Mrs. Clinton inquiring about this. David E. Kendall, counsel for the Clintons, says that Mrs. Clinton has reviewed the options (there were several versions) but does not recall them. Memorandum of telephone conversation with David E. Kendall, Dec. 28, 1995, at 1. Kendall has promised that Mrs. Clinton will respond to the interrogatories as soon as possible.

154 *Ward* Deposition at 35-36.

155 *Ward v. Madison* R.T. 101-03, 107-09. The option is Def. Ex. 3.

156 *Ward v. Madison* R.T. 110.

position at trial was that it was not bound by the second September 24, 1985 letter, because the letter never had been approved by Madison Guaranty's or Madison Financial's board of directors. Indeed, defendants argued, the letter was not to be found in Madison Guaranty's files. Latham and Strayhorn testified that they had never seen it before May or June 1986.¹⁵⁷

In addition to questioning the bona fides of the letter, Madison Guaranty's former Chief Financial Officer Greg Young offered a tax rationale for deeming the 22.5 acres security for the commissions. According to Young, Latham's \$70,000 in remaining debt was to become the tax basis for Ward's 22.5-acre parcel. Ward, in the meantime, had held the parcel for six months. When Madison Financial exercised the option, it would pay Ward \$400,000. This, less the \$70,000 still owing, was an amount roughly equal to Ward's commission, but the money would look like a profit on the sale of a parcel of land held for over six months, and Ward would be taxed at the lower capital gains tax rate then available.¹⁵⁸

The evidence on this theory was disputed, with Ward supplying some of the confusion. In deposition, Ward testified that he had agreed to wait six months for his commissions:

Well, initially, he [McDougal] prepared a statement of moneys due me, but told me that, if he retained the commissions for six months, I would benefit with long-term capital gains. After verifying the accuracy of his contention, I agreed to do just that, and I let the commissions accumulate for a six-month period.¹⁵⁹

By trial, however, Ward said his accountant had told him this idea would not work.¹⁶⁰

After a two-day trial, the jury found for Ward and against Madison Guaranty, implicitly agreeing with Ward that ownership of the 22.5 acres was

157 *Ward v. Madison* R.T. 196:3-8; Latham Deposition at 18-19, 33-34.

158 *Ward v. Madison* R.T. 124-25, 166.

159 Ward Deposition at 29-30, 66-67.

160 *Ward v. Madison* R.T. 39-42. Neither side called him at trial, but in deposition Ward's accountant, Mike Schaufele, testified that McDougal had quizzed him in Ward's presence as to how long Ward would have to hold real estate to qualify for the long-term capital gains rate. Schaufele answered "six months" but said he did not know if anything further came of the discussion. Schaufele Deposition, May 27, 1988, at 11. Hubbell says he heard of the option and does not recall its rationale but is skeptical of the notion that Ward's commissions could have been deemed long-term capital gains. Hubbell Interview, Dec. 27, 1995, at 26:10-27:6, 28:4-31:7.

additional compensation to Ward rather than an attempt to obtain long-term capital gains treatment for his commissions.¹⁶¹ Thus, for present purposes, it can be assumed that the acquisition of Castle Grande resulted in Ward, who never put up any money or assumed any risk, being owed the following:

- o approximately \$391,000 in commissions;
- o an option payment of \$35,000; and
- o the "prize property"--22.5 acres out of Castle Grande.

In part VI.C below, these facts will be analyzed with a view toward determining: whether Ward was a straw buyer; whether the transaction was fraudulent or intentionally violated Arkansas regulations that limited the size of Madison Guaranty's investment in Madison Financial; and if so whether the Rose Law Firm had any involvement in and culpability for the unlawful aspects of this transaction.

3. The liquor and sewer legal research.

After the acquisition, the Rose Law Firm performed some legal research with respect to two Castle Grande-related matters late in 1985 and early in 1986. The first concerned whether a brewery could be built on the property. The second concerned whether the sewer and water plant on the property might extend services to properties outside of Castle Grande. Both projects presented straightforward legal issues, as to which legal research was performed and opinions were rendered.

The liquor research: A month after the purchase of Castle Grande, McDougal arranged to sell "2 acres of our best property" to Bill Lyon for erection of a brewery and tasting room.¹⁶² In a memorandum from McDougal to Ward dated November 20, 1985, McDougal noted that the property needed "ABC" approval:

Subject to approval by the ABC, Bill will place his brewery in the shell building, along with a tasting room. I have spoken with the Governor on this matter, and expect it will be approved. We must be very careful to not mention that there will be a 'tavern' in the location, as word is already out to that effect and it is causing

¹⁶¹ Ward obtained a verdict and judgment for \$353,502.57--the full amount he sought less a setoff he conceded. After the failure of Madison Guaranty and a great deal of appellate activity, Ward and the RTC ultimately settled for mutual general releases and the return by Ward to the RTC of \$325,000.

¹⁶² IG Ex. III-57, at 1.

us problems in the area. Bill's operation must be sold both to the state regulators and to the public as a tourist attraction.¹⁶³

The legal issue, which Richard T. Donovan handled subject to Mrs. Clinton's supervision, was whether the proposed site for a new brewery [a Castle Grande commercial parcel] fell within Union Township's "dry area."¹⁶⁴ The project involved recreating the history of certain Arkansas townships, legal research and interviews.¹⁶⁵ A paralegal (Rebecca Arnold) was instructed to search through the county clerk's records.¹⁶⁶

Although Donovan's typewritten memorandum associates the project with Madison Guaranty (and no one else), an undated handwritten memorandum from Mrs. Clinton to Donovan states:

I visited with Seth Ward and gave him a copy of your memorandum and with Ken Shemin [a Rose Law Firm partner]. Please see Ken about a strategy to approach the ABC to argue the "dissolved township" theory. Thanks. Hillary. Charge Madison Guaranty IDC.¹⁶⁷

Jim McDougal obtained a copy of the same memorandum and sent it to Jim Guy Tucker under cover of a memorandum dated February 7, 1986, which reads as follows: "It looks like our township is dry. Attached is an opinion Seth got from his attorney."¹⁶⁸

The sewer and water research: This work apparently began in October 1985, when David Thomas researched some issues and prepared a memorandum (which has not been located) to Webster Hubbell.¹⁶⁹ Apart from that memorandum, the legal work on the sewage issue is well

163 *Id.*

164 RLF2 02981-86; IG Ex. III-58.

165 RLF2 02965-80, RLF2 02998-3019, RLF2 03106-3121; IG Ex. III-62.

166 RLF2 02968; IG Ex. III-61.

167 RLF2 02988; IG Ex. III-60.

168 IG Ex. III-63. Richard Donovan does not remember any of the documents pertaining to his liquor research. IG Ex. III-68, at 3-4. On several timesheets reflecting this work, Donovan identified the client as "Seth Ward." RIC118711-12.

169 RIC118729; Thomas Interview, Dec. 19, 1995, at 13.

documented.¹⁷⁰ The issues here seem to have been determining the powers of Castle Sewer & Water Company and deciding whether it needed certain permits to exercise these powers.¹⁷¹

4. The Rose Law Firm's records of its Castle Grande work.

Madison Guaranty's records contain three invoices related to its Castle Grande work. The first such invoice reads as follows:

For legal services rendered through January 30, 1986 by H. R. Clinton, T. Thrash [Thomas P. Thrash], R. Donovan [sic: Richard T. Donovan], K. Shemin [Kenneth R. Shemin] and J. Birch:

Matter: 5 - I.D.C.

Review contract for sale; telephone conference with Seth Ward and Charlie Cook, Daryl Dover, Alton Bowen at Beach Abstract, Peggy Rogers and Steve Wade(?); make changes in documents; review changes in agreement; correspondence to all parties; attend I.D.C. board meeting; prepare corporate resolutions; review title commitment; attend closing; review bill of assurances; meetings with Seth Ward, Bob Wilson and Charlie Cook; research on what approvals, permits, etc., are necessary to operate sewer and water facilities; multiple telephone conferences with state and county agencies; memo about utility status; conferences with Seth Ward regarding purchase from Brick Lile and proposed industrial development on site; research into state law governing liquor permits; research at county clerk's office and election commission; telephone conferences with election commission; numerous telephone conferences with Daryl Dover.¹⁷²

For these services, Madison Guaranty was billed fees of \$4,651.50 and disbursements of \$18.85, for a total of \$4,670.35.¹⁷³

170 RLF2 02892-02964; IG Exs. III-66, III-67

171 Again, Richard Donovan remembers nothing about this work. IG Ex. III-68, at 4.

172 RTCKC42747; IG Ex. III-51.

173 *Id.*

The second such invoice is dated March 6, 1986 and covers services on matter 5, "I.D.C.," through February 13, 1986.¹⁷⁴ All the services seem to have pertained to the liquor and sewer issues:

Receipt and review of R. Donovan memo on manufacturing facility; Conferences with R. Donovan, J. Birch, H. Clinton and K. Shemin regarding permit to manufacture beer in "dry" township; Research at County Courthouse regarding Old Union Township; Ran Lexis search for cases dealing with township dissolutions; Research issue of effect of Township dissolution on "wet/dry" status; drafted memo; Telephone conferences with Pulaski County Election Commission regarding boundaries of Old Union Township; Telephone conference with Secretary of State regarding boundaries of Old Union Township; Memo to B. Arnold regarding county court research; Researched issue of public utility, supplying of water; Telephone conference with PSC legal staff; Drafted memo regarding public utilities.¹⁷⁵

For these services, Madison Guaranty was billed fees of \$990.00 and disbursements of \$3.25, for a total of \$993.25.¹⁷⁶

The third such invoice is dated April 7, 1986 and covers work through March 31, 1986.¹⁷⁷ Again, the services all seem to have pertained to the liquor and sewer issues:

Revised memo regarding public utility issues; response to auditor's request; research at county courthouse regarding old Union Township boundaries; telephone conferences with Marie Flickenger (County Planning); office conference with Rick Donovan, research at Ark. Historical Society; telephone conference with Ark. Historical Commission; Seth Ward; conference with and telephone conference with Jane Dickey regarding port; regarding Union Township; researched issue of effect of potential water patrons being within Little Rock city limits; drafted memo; reviewed Donovan memo.¹⁷⁸

174 RTCKC42755.

175 *Id.* IG Ex. III-64.

176 RTCKC42755.

177 RTCKC42757.

178 *Id.* IG Ex. III-65.

For these services, Madison Guaranty was billed fees of \$817.25 and disbursements of \$68.87, for a total of \$886.12.¹⁷⁹

There are gaps and inconsistencies in the documentation, as illustrated by the following chart, which compares the invoices to the other two available sources of information: timesheets and "fee credit reports".¹⁸⁰

Time Period	Timesheet Hours Billed	Fee Credit Reports	Invoiced Fees	Invoice Date
8/85	Thomas 1.2; Thrash 7.4			
10/85	Thomas 3.5; Thrash 5.0			
11/85		Thrash \$833.50		
12/85	Donovan 5.75			
01/86	Arnold 2.0 Donovan 3.0	Clinton \$2,731.25; Donovan \$468.75; Thrash \$262.50	\$4,651.50	1/30/86
02/86	Arnold 5.85 Donovan 8.25		\$990.00 for services through 02/13/86	03/06/86
03/86	Arnold 1.25 Donovan 3.0	Donovan \$825.00; Birch \$85	\$817.25 for services through 03/31/86	04/7/86
05/86		Arnold \$48; Clinton \$70		

¹⁷⁹ RTCKC42757.

¹⁸⁰ The timesheets data comes from RIC118693-701, RIC118724-29 and RIC118702-23. The fee credit report data comes from RIC120795-826. The invoices are cited above. The fee credit report data sometimes lumps together several matters. For example, the \$2,731.25 attributed to Mrs. Clinton in January 1986 is marked "Stock Offer & IDC." No means has been suggested to separate these matters, although as noted above there is little evidence of activity with respect to the stock offering in January 1986.

The work described in these invoices falls into three general categories: Work on the purchase of Castle Grande itself (the first six lines of the January 30, 1986 invoice); work on the sewage and water facilities at Castle Grande; and work on the liquor permit issue. Review of the documents produced by the Rose Law Firm reveals a number of documents pertaining to the sewer and liquor work but virtually nothing pertaining to the purchase of Castle Grande. The invoices quoted above suggest that meetings were attended and documents were reviewed and edited, but none of this appears in the documentary evidence. Mrs. Clinton has no recollection of any work on the acquisition, but this may signify little, as she apparently also has forgotten her work supervising the legal research pertaining to the Castle Grande liquor and sewer issues, as to which there is ample documentary evidence. When asked in an interrogatory about Castle Grande together with a number of other real estate projects funded by Madison Guaranty, she replied: "I don't believe I knew anything about [Castle Grande or, with one unrelated exception, any of the other real estate projects listed in the interrogatory]."¹⁸¹

D. The Rose Law Firm's other work for Madison Guaranty.

In addition to the stock offering/brokerage work and the Castle Grande work, the Rose Law Firm represented Madison Guaranty with respect to several loans. The first, mentioned above in footnote 88, was the Bibler-Golden loan in Colorado.¹⁸² This work seems to have been undertaken sometime between June 1985 and January 1986.¹⁸³ The other two loans were the Babcock Center and the Tulsa Econolodge loans. Judging from the documentary evidence, both seem to have been workouts that occurred after the default of two commercial loans, in both of which Madison Guaranty had obtained participations from Savers' Savings. It appears that these were the last matters that the Rose Law Firm undertook for Madison Guaranty. They did not begin until April or May 1986 and apparently continued into late 1986 or 1987.¹⁸⁴

In August 1985, Madison Guaranty considered filing an application to move its principal office to Little Rock. Madison Guaranty's president decided not to use John Selig of the Mitchell, Williams firm but to use Hillary Rodham

181 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 29(a), at 73-74.

182 See RLF2 03084-03105, 03122-51; IG Exs. III-71, III-72.

183 RLF2 03085 and IG Exs. III-71 and III-72 suggest the matter began in June 1985. The latter date comes from the January 1986 invoice, which shows less than one hour's work on this matter. IG Ex. III-73.

184 RLF2 03020-25, 03032-61, 03064-82; IG Ex. III-76. Cf. RTCKC40739-40 (which suggests but does not explicitly state that work for Madison Guaranty continued after May 15, 1987).

Clinton instead.¹⁸⁵ No evidence has been found suggesting that anything came of this idea.¹⁸⁶

E. The Rose Law Firm's withdrawal from representing Madison Guaranty.

In March 1986, the FHLBB began an examination of Madison Guaranty. The report of examination as of March 4, 1986¹⁸⁷ severely criticized Madison Guaranty and its management. As summarized in the supervisory letter accompanying the report:

[T]he continued financial viability of Madison Guaranty as it currently is structured is questionable. As of September 30, 1986, the Association's reported net worth of approximately \$2.3 million was \$3.4 million short of its minimum net worth requirement. . . . Even without giving consideration to the examiners' classification of assets . . . it appears that Madison Guaranty's net worth will be exhausted within ten months.

~~The following matters of regulatory concern were discussed by the examiners: conflicts of interest, high risk land developments, poor asset quality, excessive growth, inadequate income and net worth, low liquidity, securities speculation, excessive compensation, and poor records and controls.~~

In connection with the examination, a total of ten land development projects/direct investments aggregating \$19.1 million (net book value) were reviewed and classified pursuant to Section 561.16(c) of the Insurance Regulations [12 C.F.R. § 561.16(c)]. As a result of the classification process, losses of approximately

185 RICO23267; IG Exs. III-74, III-75. Massey says he has no recollection of working on this. IG Ex. III-28, at 11.

186 Madison Guaranty's principal office remained in Augusta, Arkansas until 1988, when Madison Guaranty successfully petitioned to change it to McCrory, Arkansas. The matter seems to have been handled without help of counsel. ASD0615-93. The Rose Law Firm's name appears nowhere in the papers.

187 This report of examination (the "1986 ROE") is dated as of March 4, 1986. This is not the date on which it was completed. Instead, this is the day that, or the day before, the examination started. Jim Clark Interview, Oct. 20, 1994, at 18. Examiner Clark stayed at Madison Guaranty until late August or early September 1986. *Id.* at 22. Although its conclusions had been discussed with Madison Guaranty's directors in June and July 1986, the report itself was sent to Madison Guaranty's directors under cover of a letter dated January 7, 1987. PMS0471-72.

\$7.6 million were identified due to assets classified as doubtful or loss¹⁸⁸

In addition to these criticisms in the supervisory letter, the report of examination itself asserted that Jim McDougal dominated Madison Guaranty and Madison Financial and had diverted funds to the McDougals' friends and relatives. The report also noted improper recognition of income in connection with seller-financed sales of real estate held by Madison Financial and stated that apparent losses associated with three real estate projects (Campobello, Maple Creek and Castle Grande) were sufficient to render Madison Guaranty insolvent.¹⁸⁹ In addition, the report asserted that "management blatantly disregarded numerous regulations, including the growth regulation. It is also apparent that certain provisions of the August 6, 1984 Supervisory Agreement were ignored."¹⁹⁰

On June 19, 1986, in the midst of the examination, the FHLBB wrote to the Board of Directors of Madison Guaranty to report on its interim findings with respect to the operating practices of Madison Guaranty. This letter alleged a violation of the 1984 supervisory agreement. It also noted Madison Guaranty's continued failure to comply with the FHLBB's net worth requirements. As of April 30, 1986, Madison Guaranty's net worth was approximately \$1.65 million short of the minimum requirement. The letter asked the Board to meet with FHLBB officials in Dallas.¹⁹¹

On July 11, 1986, the FHLBB met with Madison Guaranty's board of directors in Dallas. The board was accompanied by attorneys from the Mitchell, Williams firm: John Selig and his associate Breck Speed. The FHLBB regulators outlined Madison Guaranty's problems, starting with a net worth deficiency.¹⁹² In particular, the regulators criticized Frost & Company's lack of independence, noting that a Frost partner had borrowed money from Madison Guaranty.¹⁹³ Madison Guaranty's directors were instructed to remove Jim

188 PMS0471.

189 1986 ROE at 2, PMS0475.

190 *Id.*

191 RTCKC33989-91; ASD1841-43.

192 See ASD1833-35 (Beverly Bassett's notes of the meeting). See also IG Ex. IIf-25, at 14-15 (Bassett's description of the meeting, including her desire to remove McDougal from office).

193 *Id.*

McDougal or, in effect, have the FHLBB do it for them.¹⁹⁴ Selig bargained for a consulting arrangement or a voting trust for the McDougals. The FHLBB Supervisory Agent Walter Faulk said no: The McDougals, Latham and Bill Henley must go.¹⁹⁵ They did. The same month, McDougal suffered a nervous breakdown. He later was diagnosed as manic depressive and had an operation to clear an artery running to his brain.¹⁹⁶

On July 14, 1986, Mrs. Clinton returned Madison Guaranty's retainer and took steps to have her firm cease representing Madison Guaranty. On that day, Mrs. Clinton sent a letter to McDougal and Latham at Madison Guaranty by hand delivery.¹⁹⁷ The letter attempted to do four things. First, it memorialized the April 1985 monthly retainer arrangement (\$2,000/month) between the Rose Law Firm and Madison Guaranty. Second, it stated that Madison Guaranty "continues to rely on a number of other law firms to provide ongoing representation, and that our representation has been for isolated matters and has not been continuous or significant." Third, Mrs. Clinton returned the July monthly retainer check of \$2,000 and the Rose Law Firm issued a check to Madison Guaranty for a retainer credit of \$4,622.53. Fourth, Mrs. Clinton stated that any future representation will be on a case-by-case basis. The "bee's" are Vincent Foster and Herb Rule.¹⁹⁸

On July 17, 1986, Mrs. Clinton wrote an inter-office memorandum to Herb Rule advising Rule (and Foster) of the July 14, 1986 correspondence. The memorandum confirms that the Rose Law Firm was "continuing to do work

194 Steve Cuffman Interview, Apr. 26, 1994, at 15-16; John Selig Interview, June 8, 1994, at 10-11. Sarah Hawkins said the FHLBB "moved in" on July 11, 1986. Hawkins Deposition taken Apr. 9, 1990 in *RTC v. Frost & Company*, No. LR-C-89-216 (E.D. Ark.), at 14. See ASD1833-35 (Beverly Bassett's notes of the meeting).

195 RTCKC33981-88. At the time, Jim McDougal was president of Madison Financial, but he held no position at Madison Guaranty, having resigned as chairman and a director in 1984.

196 McDougal R.T. at 905, 929-30.

197 RLF2 03062-63; IG Ex. III-77. Latham said the letter was not preceded by any discussion of the end of the retainer arrangement. IG Ex. III-29, at 2.

198 RLF2 03059. Rule had been working on the Babcock Center and Tulsa Econolodge workouts. Foster does not appear on the Madison Guaranty invoices, but he had handled litigation for Madison Bank & Trust Company in 1981 and 1982, as described above.

on only one matter, namely the Babcock and Econolodge loans."¹⁹⁹ That work continued into late 1986 or early 1987.²⁰⁰

There may have been several reasons why Mrs. Clinton decided to return the retainer and write her July 14, 1986 letter. According to a statement made by Mrs. Clinton last year, once it was determined that Madison Guaranty could not meet the requirements imposed by Beverly Bassett for the issuance of preferred stock, Mrs. Clinton wrote the July 14, 1986 letter.²⁰¹ More recently, in her interrogatory answers, Mrs. Clinton attributed the return of the retainer to the Rose Law Firm's increasingly active practice representing the Federal Savings and Loan Insurance Corporation ("FSLIC"). Asked why she returned the retainer with the letter of July 14, 1986, she answered as follows:

This was a letter intended to terminate the "retainer arrangement" with Madison Guaranty, and the decision to terminate was made shortly before the letter was sent. In view of the increasing work the Rose Law Firm was doing for FSLIC, particularly with regard to the receivership of the Guaranty Savings and Loan Association in Harrison, Arkansas, the firm had decided in early July, 1986, generally to avoid taking on any new or expanded representations of S&L's or their affiliates. Accordingly, I wrote to Madison Guaranty on July 14, 1986, to terminate the monthly "retainer arrangement." In any event, as my letter indicated, the firm had not done a significant amount of work for Madison Guaranty: the S&L "has run a credit in its account at the end of every month" and Madison Guaranty "has been relying and continues to rely on a number of other law firms to provide ongoing representation."²⁰²

199 RLF2 03059. This seems to be accurate. According to a phone message slip, on July 9, 1986, Don Denton called Mrs. Clinton. RLF2 03061. Denton requested the original files for the Babcock Center and Tulsa Econolodge matters for the "examiners review." On July 10, 1986, Kevin Burns (a Rose associate) wrote a cover letter to Denton enclosing those files (with a copy to Mrs. Clinton). RLF2 03060; IG Ex. III-76, at 13.

200 IG Ex. III-76, at 14-21.

201 Text of Mrs. Clinton's April 22, 1994 press conference, as transcribed by Federal News Service, at 15. The timing of this is difficult to verify, given that the preferred stock matter had been dormant for some time.

202 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(g)(2), at 36-37. Hubbell's statement to the IG is consistent with this. IG Ex. III-69, at 10. So is his recent testimony before the Senate Special Committee. Senate Hearing Transcript, Dec. 1, 1995, at 154:1-155:6. Vincent Foster supervised the Guaranty Savings work. Hubbell Interview, Dec. 27, 1995, at 44:13-45:9. The FHLBB took over Guaranty Savings on December 6, 1985. FHLBB Press Release dated Dec. 6, 1985. The

(continued...)

In any event, apparently the return of the retainer had nothing to do with the removal of Messrs. McDougal and Latham by the FHLBB. As of when she wrote her July 14, 1986 letter, Mrs. Clinton says she knew nothing of this.²⁰³ Soon enough, however, rumors of problems at Madison Guaranty began to circulate.²⁰⁴ By July 25, 1986, Madison Guaranty's problems made the *Arkansas Democrat*. Rumors of its insolvency, according to an article, were circulating "widely throughout Little Rock."²⁰⁵ The article made no mention of McDougal's and Latham's removal.

On July 22, 1986, Frost & Company resigned as auditors for Madison Guaranty after FHLBB examiners raised questions about Frost's independence in light of the fact that one of Frost's partners had borrowed money from Madison Guaranty.²⁰⁶ On September 8, 1986, Madison Guaranty notified the FHLBB's district director of examinations of Frost's resignation.²⁰⁷ Peat, Marwick, Mitchell and Company replaced Frost & Company as Madison Guaranty's auditors.

202(...continued)

Rose Law Firm was retained to handle the Guaranty Savings work in January 1986, roughly six months before Mrs. Clinton's letter.

203 *Id.*, answer to Interrogatory No. 17(g)(5), at 38 ("When I wrote my July 17, 1986, memo to Herb Ruie (RLF2 03059) and my July 14, 1986 letter to Messrs. McDougal and Latham (RLF2 03062-03063), I do not believe I had heard anything about a July 11, 1986 meeting in Dallas between FSLIC and Madison Guaranty personnel."). Hubbell says that these matters had nothing to do with the decision to stop representing Madison Guaranty. IG Ex. III-69, at 10-11. His Senate testimony is ambiguous:

Mr. Chertoff. Was that [the decision to cease representing Madison Guaranty] shortly before the bank examiners finally insisted that Mr. McDougal be tossed out of the bank.

Mr. Hubbell. I believe Mr. McDougal was already out of the bank, but I may be wrong, by that time.

Senate Hearing Transcript, Dec. 1, 1995, at 154:7-11. Compare Hubbell Interview, Dec. 27, 1995, at 340:18-41:10, where Hubbell says he recalls Seth Ward telling him, before McDougal's resignation, that "the regulators are all over, and McDougal may be getting out."

204 Some people had an inkling of problems even before this. Seth Ward told Webster Hubbell in the spring of 1986 that he "had some sense Madison was having trouble" and was "very anxious" about whether he was going to be paid the commissions he was owed. Hubbell Interview, Dec. 27, 1995, at 43:21-44:12.

205 David Wannemacher, "Third S&L Reportedly Facing Difficulty," *Arkansas Democrat*, July 25, 1986, RLF2 01624

206 RTCKC42744-45.

207 RTCKC42743-44.

On September 30, 1986, Mrs. Clinton responded to a Peat, Marwick, Mitchell & Company audit letter for Madison Guaranty. Her letter states that the Rose Law Firm was not made aware of any pending or threatened litigation, claims or assessments against Madison Guaranty.²⁰⁹ The letter notes that Madison Guaranty owed the Rose Law Firm \$2,160.55 for services and expenses as of June 30, 1986. As noted, Mrs. Clinton's July 14, 1986 letter had refunded \$4,622.53 to Madison Guaranty and returned the \$2,000 retainer check for July, 1986. No clear explanation has been offered for why this money was not applied to the outstanding receivable for \$2,160.55 rather than being refunded by Mrs. Clinton.²⁰⁹

As previously noted, the Sabcock Center and Tulsa Econolodge work continued on, apparently at a low level of activity, to November 1986 and possibly into 1987.²¹⁰

VI. ANALYSIS.

A. Potential causes of action.

1. Primary liability for fraud or intentional misconduct.

As noted in part III above, the scope of this investigation is defined by the applicable statutes of limitations, which encompass claims of fraud and intentional misconduct.

The meaning of "fraud" is determined by looking to state law.²¹¹ Under Arkansas law, the elements of common law fraud are:

- A false representation of a material fact;
- Knowledge or belief on the part of the person making the representation that the representation is false;
- An intent to induce reliance upon the false representation;

208 RTCKC41005-06.

209 Mrs. Clinton does not know why the Rose Law Firm returned the balance of the retainer to Madison Guaranty when work was still ongoing and the Rose Law Firm was owed money. Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(g)(4), 17(h), at 37-39.

210 E.g., RLF2 03024-25, 03037, 03049; IG Ex. III-76, at 14-21.

211 *O'Melveny & Myers v. FDIC*, 114 S. Ct. 2048 (1994).

- o Justifiable reliance; and
- o Resulting damages.²¹²

The meaning of "intentional misconduct," on the other hand, is not entirely clear. In the absence of any clear caselaw, a reasonable construction of this language would encompass intentional torts, such as conversion, and other actionable conduct so long as that conduct is accompanied by the requisite intent. For example, while not always thought of as an intentional tort, a breach of fiduciary duty could be intentional. Similarly, evidence of an intent to defraud someone to whom a fiduciary duty is owed, or to convert that person's property, might establish an intentional breach of the duty of loyalty.

2. Secondary liability for conspiracy or aiding and abetting.

In addition to primary liability for fraud or intentional misconduct, a reasonable construction of the extender statute also would have it encompass theories of secondary liability that are based on intentional misconduct. Such theories include conspiracy and aiding and abetting.

In Arkansas, the elements of civil conspiracy are:

- o A combination of two or more persons;
- o To accomplish an unlawful or oppressive purpose or a lawful purpose by unlawful, oppressive or amoral means;
- o One or more overt acts committed pursuant to the conspiracy;
- o Damages caused by these acts.²¹³

To state a claim for civil conspiracy, one must be able to identify the underlying unlawful act that the conspirators were aiming to commit. The conspiracy (or agreement) by itself is not actionable unless one can show that it was aimed at the commission of the wrong. Thus, while conspiracy is sometimes referred to as a claim or cause of action all by itself, it is better conceived of as an alternate way of pleading the underlying tort against a group of people, some of whom did not commit all the elements of the tort themselves.

212 *Morris v. Valley Forge Insurance Co.*, 305 Ark. 25, 805 S.W.2d 948, 951 (1991).

213 *Mason v. Funderburk*, 247 Ark. 521, 446 S.W. 2d 543, 548 (1969).

and thus would not be directly liable individually absent the allegation of conspiracy.²¹⁴

Arkansas has expressly adopted the principle of aiding and abetting:

All who actively participate in any manner in the commission of a tort, or who command, direct, advise, encourage, aid or abet its commission, are jointly and severally liable therefor.²¹⁵

The Arkansas courts have not, however, delineated the elements for establishing aiding and abetting liability in a civil context.

Other courts, in slightly different contexts, have elaborated on the elements of aiding and abetting and on the standard to be applied in determining whether the elements have been satisfied. In a leading case, one federal court, relying in part on *Restatement (Second) of Torts* § 876 (1979), set forth the following elements for aiding and abetting:

- the party whom the defendant aids must perform a wrongful act that causes injury;
- the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; and
- the defendant must knowingly and substantially assist the principal violation.²¹⁶

Like conspiracy, aiding and abetting is a legal theory used to impose liability on someone who knowingly assists in the commission of a tort but does not perform all the elements of that tort himself. Without the underlying tort, there is no claim for aiding or abetting.

Thus, to have a claim under any of these theories, the RTC must prove that the defendant engaged in intentional misconduct. The first issue, therefore, is what the prospective defendant knew. If that element is established, the

214 See *Southwestern Pub. Co. v. Ney*, 227 Ark. 852, 302 S.W.2d 538, 542-43 (1957); *Ragsdale v. Watson*, 201 F. Supp. 495, 501-02 (W.D. Ark. 1962).

215 *Hinton v. Bryant*, 236 Ark. 577, 367 S.W.2d 442 (1963). See also *Cobb v. Indian Springs, Inc.*, 258 Ark. 9, 522 S.W.2d 383 (1975) (applying certain principles of aiding and abetting, i.e., advice or encouragement as substantial factor in causing tort, though not labeling them as such).

216 *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983).

issue then becomes whether what the prospective defendant did was intentional and wrongful.

B. The preferred stock offering and brokerage work.

As described above, the Rose Law Firm's work in this area did not result either in permission to operate the brokerage or in the issuance of preferred stock or subordinated debt. Thus, if the Rose Law Firm's work on these matters were to be civilly actionable, it is not at all clear there would be any damages, or any causal connection between the work and any damages. With respect to causation and damages, the one theory that has been suggested is that the Arkansas regulators did not receive an accurate picture of Madison Guaranty's financial situation and therefore allowed Madison Guaranty to operate longer than might have been the case otherwise. Put more concretely, the suggestion is that the Arkansas Securities Department would have shut down Madison Guaranty sooner had it known in 1985 what it learned in 1987: that Madison Guaranty was insolvent no later than 1985.

Applying this theory, the issue here is whether the Rose Law Firm knew, or might have known, of the problems with Frost & Company's audit of Madison Guaranty that Peat Marwick Mitchell & Company discovered in 1987.

The regulatory background to the preferred stock offering was one that should have caused the lawyers to be cautious—had they been aware of it. In January 1984, the FHLBB had started a special limited examination of Madison Guaranty. The report of examination,²¹⁷ which was sent to Madison Guaranty's board of directors on June 1, 1984, was critical of the association. It noted poor appraisal practices; loan underwriting and documentation problems; loans to affiliates; excessive concentration in real estate development projects; loans to borrowers without equity; reliance on brokered deposits; asset-liability mismatches; and questionable accounting practices.²¹⁸ The examiners determined that approximately \$565,000 of gains recognized by Madison Financial were improper. Adjusting Madison's books by that amount would have more than eliminated the net worth of the institution. It would have created a capital deficit of \$70,000.²¹⁹

The 1984 examination led to a supervisory agreement, to which Madison Guaranty's Board of Directors consented in July 1984. The supervisory agreement limited transactions with affiliated persons, required compliance with

217 PMS0323-42.

218 PMS0326-35. Cited specifically were Campobello, Goldmine Springs and Maple Creek Farms, all real estate projects financed by Madison Guaranty.

219 PMS0329.

the minimum net worth requirement and required written policies and a business plan.²²⁰ Soon after the 1984 examination and the supervisory agreement, Jim McDougal resigned as chairman of Madison Guaranty and Jim and Susan McDougal resigned as directors.²²¹

The regulators knew all this, but it is unclear whether the Rose Law Firm did. Mrs. Clinton says that at no time through 1986 did she know of the 1984 ROE or the supervisory agreement.²²² Thomas Thrash, who worked on the Castle Grande acquisition, said he knew nothing about the 1984 ROE, the supervisory agreement or the 1986 ROE.²²³ The same is true of Thrash's associate R. Davis Thomas, Jr. and of Webster Hubbell.²²⁴

The Rose Law Firm seems to have made few representations on the issue of Madison Guaranty's financial condition, and the representations that were made were not very positive. As described, Richard Massey's letter of June 17, 1985 enclosed calculations showing that Madison Guaranty had a positive net worth but that this net worth was \$410,436 less than that required by the FHLBB's minimum net worth regulation.²²⁵ Massey later sent Handley a copy of Frost & Company's audit, which Handley challenged. Massey replied in a letter enclosing letters from Latham and from Frost & Company. By the end of August 1985, Massey and the Securities Department evidently agreed

220 RTCKC33989-91; PMS0478.

221 E.g., RLF1 26616. Jim McDougal maintained his positions at Madison Financial. Madison Guaranty officers, for example Harry Don Denton, believed that the McDougals continued to run Madison Guaranty:

Q. Was Jim McDougal running the savings and loan?

A. Yes. To the extent he knew how.

Q. Was he the head honcho around there?

A. Yes. When Susan wasn't there.

Denton Deposition, Apr. 10, 1990, at 25:23-26:1. Denton did not join Madison Guaranty until April 1985. *Id.* at 8:11-18.

222 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 16(b)(3)-(4), at 33.

223 Thrash Interview, Dec. 1, 1995, at 36:18-38:13.

224 Thomas Interview, Dec. 19, 1995, at 28:30; Hubbell Interview, Dec. 27, 1995, at 39:20-40:17.

225 DKRT200342. The regulation was 12 C.F.R. § 563.13.

that the net worth deficiency had grown to \$842,393.²²⁶ By the end of the year, Latham of Madison Guaranty had conceded that Madison Guaranty would be approximately \$1 million short of its net worth requirement as of December 31, 1985.²²⁷

With benefit of hindsight, all these numbers probably were too low. The issue, however, is not whether they were right, but whether someone knew they were wrong when they were presented to the Securities Department. For this no evidence has been found. Indeed, the evidence suggests that the Rose Law Firm knew much less about this subject than did the Arkansas Securities Department.

Thus, evidence of the element of knowledge is lacking. In addition, there are other reasons to doubt that the RTC has any claim for fraud or intentional misconduct:

If *arguendo* there were evidence to support the contention that lawyers at the Rose Law Firm knew of Madison Guaranty's true financial condition in 1985 and 1986, it is not clear that failing to disclose this would be actionable. In most circumstances, a lawyer's duties in such circumstances would be first, to advise the client to correct the misstatement and second, to withdraw from the representation if the client refused.²²⁸

If *arguendo* not correcting the erroneous financial statements was actionable, it is not clear that a failure to do so caused Madison Guaranty to suffer any damages. As shown above, there really was no dispute about the fact that, in 1985, Madison Guaranty did not meet its net worth requirement, although the exact level of the deficiency may have been unclear. In addition, Madison Guaranty never actually issued preferred stock or opened a brokerage. Thus, it is hard to see any causal connection between any acts or omissions of the Rose Law Firm in this regard and damage to Madison Guaranty (and hence to the RTC).

Furthermore, it does not appear that the Rose Law Firm's work deterred Arkansas regulators from doing anything they might have done. In a memorandum dated February 28, 1992 to *The New York Times*, Bassett said

226 DKRT200172.

227 RLF2 00019-19

228 E.g., *Fortson v. Winstead, McGuire, Sechrest & Minick*, 961 F.2d 469, 473-75 (4th Cir. 1992); *Abell v. Potomac Ins. Co.*, 858 F.2d 1104, 1124-26, 1131-33 (5th Cir. 1988), cert. denied, 492 U.S. 918 (1989). The analysis might differ if the law firm had rendered a formal opinion. E.g., *Kline v. First Western Government Securities, Inc.*, 24 F.3d 480, 490 (3d Cir.), cert. denied, 115 S. Ct. 613 (1994).

that her department had no definitive proof of Madison Guaranty's insolvency until 1987, did not consider the FHLBB reports of examination sufficient proof of insolvency to warrant action and doubted that proof of insolvency, even if it had been presented in 1985, would have made much difference:

Even if we had proof of insolvency in 1985, I cannot say our actions would have been different. State law requires that when the savings and loan supervisor determines that a savings and loan is insolvent, the state must notify the savings and loan of such insolvency. The savings and loan then must present a plan to the supervisor as to how the solvency will be restored within a reasonable time. A plan to issue \$3,000,000 of preferred stock within 90 to 120 days might well have been sufficient to satisfy delaying any receivership until at least the expiration of the offering period.²²⁹

While this memorandum is not contemporaneous, Bassett's contention receives support from the circumstantial evidence. Bassett's department had access to the reports of examination from 1984 and 1986, discussed above. The department was on notice as to the federal examiners' contentions regarding Madison Guaranty's financial position. In addition, the department knew that, by Madison Guaranty's own calculations, its net worth deficiency was growing and had grown from \$410,496 as of March 31, 1985 to \$842,393 as of June 30, 1985 to an estimated \$1 million as of December 31, 1985.²³⁰ Furthermore, the issue at the time with respect to the Frost & Company audit was not whether Madison Guaranty was insolvent but whether Madison Guaranty's regulatory net worth as of December 31, 1984 was a positive \$606,501 or a positive \$708,285.²³¹

229. Memorandum from Beverly Bassett Schaffer to Jeff Girth [sic: Gerth], New York Times, Feb. 28, 1992, RLF2 00001-05; IG Ex. III-25, at 19-23. See also IG Ex. III-25, at 6-18, Bassett's earlier memorandum to the same reporter. Bassett apparently said the same things to Richard Donovan, a partner in the Rose Law Firm, when he interviewed her for the Frost & Company litigation. IG Ex. III-68, at 19. On top of a file entitled "Application for a Broker-Dealer 1985," produced by the Arkansas Securities Department, an undated note in handwriting that appears to be Bassett's (ASD1208) reads as follows:

Memo to file

Madison never completed the additional capitalization for the association. Therefore, this application was never approved.

BB

230 See nn.51, 67, 72, 82, 84 above.

231 DKRT200126-30.

Finally, if anything, the Arkansas regulators took a more aggressive position toward Madison Guaranty than did the FHLBB. For example, on November 16, 1987, Bassett wrote a letter to Madison Guaranty's board of directors, informing it that the association "had a negative net worth of \$10,829,223.00 as of December 31, 1986 and a net loss of \$4,801,667.00 for the twelve month period ended December 31, 1986."²³² She then quoted extensively from state statutes pertaining to insolvent savings and loans, and gave the directors notice that:

the Savings and Loan Supervisor considers the Association's assets impaired and the Association insolvent and . . . the Board of Directors must immediately take any and all steps and actions necessary to restore solvency to the Association and . . . on or before December 31, 1987 the Board of Directors must file a detailed report of actions taken and proof that solvency has been restored.²³³

Failing that, Bassett threatened to petition the Chancery Court for the appointment of a receiver or conservator.²³⁴

On December 10, 1987, Beverly Bassett wrote a letter to Stewart Root, Director, Federal Savings and Loan Insurance Corporation, stating that Madison Guaranty (and two other Arkansas thrifts) are "unquestionably insolvent and have been so for a long time."²³⁵ Bassett goes on to state that Arkansas law requires her to "file a petition for the appointment of a receiver or conservator if proof is not filed that solvency has been restored in a reasonable amount of time."²³⁶

To date we have not filed petitions to appoint receivers for these associations because we have received no assurance that the FSLIC will accept the appointment as receiver and because the Federal Home Loan Bank Board ("FHLBB") has repeatedly promised to find a purchaser or merger partner for the associations. However, since it is apparent now that these associations cannot be restored to solvency without the assistance of the FSLIC and since it appears unlikely that the FHLBB will

232 ASD1605-10.

233 *Id.* at 1609.

234 *Id.* at 1609-10.

235 *Id.* at 1603-04.

236 *Id.*

succeed in finding a purchaser or merger partner, we must request that these associations be transferred immediately to the FSLIC.²³⁷

That did not happen for some time for reasons that had nothing to do with Bassett.²³⁸ Thus, Madison Guaranty remained in private hands until on or about February 28, 1989, when the FSLIC took possession of Madison Guaranty as its conservator.²³⁹

C. The Castle Grande work.

The investment in Castle Grande has been questioned on numerous grounds, but most of these have nothing to do with the Rose Law Firm. The acquisition of Castle Grande did, however, involve the Rose Law Firm to some extent. The acquisition can be questioned on the theory that Ward, having given Madison Financial an option on the land and having placed no money of his own at risk, was really a straw man purchaser for Madison Financial pursuant to a scheme to circumvent Arkansas law. This theory seems first to have been advanced in the *Ward v. Madison* litigation, in which Madison Guaranty and Madison Financial (two years after McDougal and Latham had been removed) stated the following in an answer to an interrogatory asking about their "unclean hands" defense:

Plaintiff [Seth Ward] personally profited from the transactions with Jim McDougal. With knowledge, the Plaintiff agreed to purchase a section of the Undeveloped Property [Castle Grande] in his name so that Madison Financial Corporation would not exceed its investment limitations, imposed by the FHLBB, of 6% of the

237 *Id.*

238 At the time, the FSLIC did not have enough money to close all insolvent thrifts and had far more pressing problems than Madison Guaranty. Memorandum of telephone interview of Karen Bruton, Dec. 20, 1995, at 1-2. See also ASD1591-92, a February 10, 1988 memorandum in which the Supervisory Agent recounts the same financial facts but concludes that "[t]he present management team is believed to be capable of addressing the problems inherent to the institution." As noted, the new management had changed accounting firms. In addition, management had hired law firms to work out Madison Guaranty's problem assets and to report on any wrongdoing that might be uncovered. See also IG Ex. III-25, at 14-17. Bassett told Frost & Company's attorney that she wanted to place Madison Guaranty into receivership but was discouraged from taking that action by the FHLBB. IG Ex. III-159, at 3.

239 ASD1482. By Resolution No. 89-483, the FHLBB ordered the conservatorship on February 28, 1989. The FSLIC's special representative took possession on or about February 28, 1989. After the enactment of FIRREA, the RTC succeeded FSLIC as Madison Guaranty's conservator. 12 U.S.C. § 1441a(b)(6) (Supp. 1990). On November 30, 1989, the Office of Thrift Supervision placed Madison Guaranty in receivership and appointed the RTC as receiver of Madison Guaranty.

assets of the corporation. In effect, Plaintiff acted as a straw man for the real estate purchase for the mutual benefit of himself, Jim McDougal and other individuals.²⁴⁰

Arkansas law limits the amount of money that an Arkansas savings and loan may invest in real estate to six percent of assets.²⁴¹ At the time of Madison Guaranty's last examination before the Castle Grande transaction, in 1984, Madison Guaranty had been criticized for violating this limitation, and in response Madison Guaranty's board of directors had promised to bring it into compliance with this limitation.²⁴²

According to Madison Guaranty's Chief Financial Officer, Greg Young, the investment limitation meant that Madison Guaranty could not purchase the entire Castle Grande parcel itself.²⁴³ McDougal and Ward developed the idea of having Seth Ward purchase part of Castle Grande, so that the purchase price of the remainder to be purchased by Madison Financial would not exceed the limit. According to John Latham, there were at least three attractions to structuring the transaction this way:

- Complying with the Arkansas statute.
- Providing Ward with an opportunity to make some money.
- Obliging Madison Financial only to purchase the portion of the property that it really wanted--the portion it hoped to use for a

240 Defendants' Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, dated June 2, 1988 in *Ward v. Madison*, answer to Interrogatory No. 18, at 11-12. Defendants did not do much with this theory at trial. Also, the regulation at issue is a state regulation, not an FHLBB regulation.

241 Section V(C) of the Rules and Regulation of the Arkansas Savings and Loan Association Board. See *Ward v. Madison* R.T. 119; Latham Deposition at 7. See also IG Ex. III-50, at 2, minutes of Madison Financial's board of directors dated Jan. 21, 1985, which authorize McDougal "to make any acquisitions he deems necessary, with the requirement that such acquisition not cause the Savings and Loan to exceed its 6% of assets limitation for investment in the Service Corporation."

242 According to the Report of Examination as of January 20, 1984, Madison Guaranty's total investment in Madison Financial was \$2,386,590, or 14.1 percent of assets. PMS0331. The board said it would comply with the regulation and had taken steps to do so by collecting on a loan made to Chris Wade in connection with Campobello. PMS0357.

243 *Ward v. Madison* R.T. 121. For reasons explained below, Young may have been wrong in supposing that Madison Financial could lawfully buy any of Castle Grande.

residential development, as opposed to the portion set aside for industrial development.²⁴⁴

Two issues are apparent: Did the structure, rather than complying with Arkansas law, unlawfully seek to circumvent it, or was it even fraudulent? If creation of the structure was fraudulent or intentional misconduct, did the Rose Law Firm have anything to do with its creation, and therefore any responsibility for the illegality?

1. The legality of the acquisition.

The first question is whether the acquisition of Castle Grande was fraudulent or otherwise intended to violate Arkansas law. The short answer is that a court might well hold that the acquisition, as structured, was fraudulent and violated section V(C) of the Rules and Regulations of the Arkansas Savings and Loan Association Board.

Fraud: McDougal seems to have concealed the terms of his agreement with Ward from Madison Guaranty's and Madison Financial's boards; at the very least, Latham and Strayhorn testified that the boards had not approved the terms, that they did not know the terms and that they could not find the relevant documents (notably the second version of the September 24, 1985 letter) in Madison Guaranty's files or Madison Financial's files.²⁴⁵ This evidence, if credited, would establish concealment by someone who, as a director of Madison Financial, had a duty to disclose the facts. It would not, however, without more, establish fraud on the part of anyone else. Ward as a consultant did not have the same duties as McDougal as a director. No evidence has been found suggesting that Ward knew McDougal would conceal the terms of this deal from McDougal's board.

An alternative theory of fraud is that the use of Ward as a straw purchaser was itself fraudulent, because it concealed Madison Financial's intent to acquire the entire parcel. That theory is best explored in light of the issue of whether the acquisition violated the Arkansas regulation and if so whether the use of Ward was designed to conceal that violation.

244 IG Ex. III-29, at 3. Latham recalled these three general objectives but could not recall any specific conversations on the subject or, for that matter, who developed the structure. The Rose Law Firm's Response to the Reports of the Inspectors General, dated Sept. 12, 1995 ("Rose Response to IG"), suggests that Latham himself developed the structure and flatly asserts that "Madison masterminded the structure of the purchase . . ." (Rose Response to IG at 52-53) but the cited evidence does not establish either proposition.

245 *Ward v. Madison* R.T. 196; Latham Deposition at 18-19, 33-34.

Violation of the Arkansas regulation: Section V of the Rules and Regulations of the Arkansas Savings and Loan Association Board pertains to service corporations. Section V(A) permits their creation and lists their ~~permitting activities, which include "[a]cquisition of unimproved real estate lots,~~ and other unimproved real estate for the purpose of prompt development and subdivision" Section V(C) limits a savings and loan's investment in its service corporations. It provides:

C. Limitations:

An association may make any investment under this section if its aggregate outstanding investment in the capital stock, obligations, or other securities of service corporations and subsidiaries thereof (including all loans, secured or unsecured, to service corporations, or any subsidiaries thereof, and to joint ventures of such service corporation or subsidiaries, whether or not the association is a stockholder in such service corporations) would not exceed thereupon six (6%) percent of the association's assets. For the purpose of this section, the term "aggregate ~~outstanding investment~~" means the sum of amounts paid for the acquisition of capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of services corporations and ~~amounts paid to the association to retire obligations of service corporations.~~

To read the testimony of Latham, it would appear that the issue here is whether Madison Guaranty's investment in its service corporation Madison Financial includes the \$1,115,000 loaned to Seth Ward to pay for his portion of Castle Grande as well as the \$600,000 that Madison Financial paid for its portion of Castle Grande. Ironically, Madison Guaranty may have violated the regulation regardless of how it structured the deal.

As of September 30, 1985, Madison Guaranty's assets totaled \$93.2 million.²⁴⁶ Six percent of this is \$5.6 million. According to Madison Guaranty's Monthly Report to the FHLBB as of September 30, 1985, Madison Guaranty's investment in Madison Financial totaled \$5.96 million,²⁴⁷ or roughly \$360,000 in excess of the limit. Therefore, whether Madison Guaranty's investment includes only the \$600,000, or the \$1,115,000 as well as the \$600,000, the acquisition of Castle Grande would violate section V(C).

246 Madison Guaranty's Monthly Report to the FHLBB as of September 30, 1985, line 050.

247 *Id.*, § K, line 005.

Be that as it may, the parties seemed to think that by reducing the investment to \$600,000 they would have avoided a violation of section V(C). As intent matters, the analysis turns on whether Seth Ward should be deemed a bona fide borrower in his own right, separate and distinct from Madison Financial, or whether he should be deemed a straw man or nominee, who is simply holding the land for Madison Financial, so that the land did not show up on its books as a violation of section V(C). There are no reported cases construing section V(C). Nevertheless, the situation is similar to that presented by the federal regulation limiting loans to one borrower.²⁴⁸ That regulation limits total lending to one borrower to a percentage of an institution's assets. The pertinent issue is whether a borrower that appears to be separate and distinct actually is a straw or nominee.

A case from the United States Court of Appeals for the Ninth Circuit, *United States v. Brown*,²⁴⁹ is instructive. An Oregon thrift, State Federal Savings & Loan Association, had financial difficulties--in particular, a lot of foreclosed real estate (in savings and loan parlance, "real estate owned," or "REO") on its books that earned little revenue. New management wanted to get this REO off of State Federal's books. Management agreed with a real estate developer and borrower, Nevis, ~~to loan him money so that he could buy the REO.~~ State Federal's loans to Nevis, however, already exceeded the limit imposed by the loans to one borrower regulation. Therefore, State Federal's management entered into a series of transactions designed to put money into ~~Nevis' hands while concealing that fact.~~ ~~One such transaction involved~~ defendant Brown. The Court of Appeals described that transaction as follows:

He [Brown], in effect, had one of his companies (Marin Federal) purchase certain property from Nevis and obtain a loan from State Federal to finance that purchase. The money went to Nevis, and Nevis retained possession of and the right to repurchase the property. Brown guaranteed the loan but Nevis agreed to pay it off. The sale would not have been made had repurchase not been agreed to in advance. Brown and his company were quite

248: Now 12 C.F.R. § 563.93 (1995). At the time, it was 12 C.F.R. § 563.9-3 (1985). An even closer analogy would be presented by the FHLBB's direct investment regulation, which, like the Arkansas regulation, limited investment in service corporations 12 C.F.R. § 563.9-8 (1985), later renumbered 12 C.F.R. § 563.98 (1990), expired July 13, 1990.

249 912 F.2d 1040 (9th Cir. 1990). See also *United States v. Tullios*, 868 F.2d 689, 691-96 (5th Cir.), cert. denied, 490 U.S. 1112 (1989); *United States v. Kindig*, 854 F.2d 703, 704-08 (5th Cir. 1988); *United States v. Griffin*, 579 F.2d 1104, 1109-10 (8th Cir.), cert. denied, 439 U.S. 981 (1978).

clearly no more than nominees and vehicles for getting cash from State Federal to Nevis.²⁵⁰

~~On these facts, the Court of Appeals affirmed Brown's conviction for aiding and abetting bank fraud and false entries by management, but reversed his conviction for conspiracy.~~²⁵¹

~~Compare the situation in Brown with the situation here. Madison Guaranty funded 100 percent of Ward's acquisition of his portion of Castle Grande, and did so weeks before Ward's loan application was approved. The loan was nonrecourse: Ward placed none of his own money at risk.~~²⁵²
~~Madison Financial had an option to buy back all of Ward's land, save perhaps for 22.5 acres. Madison Guaranty acted in all respects like an owner: It took charge of selling Castle Grande, including Ward's part, and did so, purportedly subject only to Ward's approval of the sales price. It conveyed parcels to the purchasers; typically, the deeds reflected Madison Financial, not Ward, as the vendor. Until parcels sold, Madison Financial, not Ward, collected the rents and paid all taxes, insurance and fees. On these facts, it seems highly probable that Ward would be deemed a straw. Indeed, Madison Guaranty alleged as much in defense of Ward v. Madison.~~²⁵³

As noted above, the use of Seth Ward as a straw has some of the earmarks of a fraudulent or intentional attempt to violate the law. Madison Guaranty's books and records were made to reflect a loan to a third person, not a straw. The terms of Ward's agreement with McDougal seem to have been hidden from others. Latham and Strayhorn say they knew nothing of the second letter of September 24, 1985, and Strayhorn says no copy of it could be located in Madison Guaranty's or Madison Financial's files.²⁵⁴ At a minimum, it would seem that McDougal handled the transaction in a manner designed to mislead FHLBB examiners and regulators.

250. *United States v. Brown*, 912 F.2d at 1041

251. *Id.* at 1042-45. The court found ample evidence that "Brown engaged in activities which misrepresented the true borrower and true purpose of the loans, all with the intention of deceiving State and Federal officials, FSLIC, and FHLB," and therefore affirmed the aiding and abetting count. On the other hand, the court found no evidence that Brown, who participated in only one transaction, knew of the other defendants' broader conspiracy, and therefore reversed the conspiracy count.

252. In contrast, Brown had guaranteed Nevis' repayment.

253. Defendants' Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, dated June 2, 1988 in *Ward v. Madison*, answer to Interrogatory No. 18, at 11-12.

254. Latham Deposition at 16-20, 34-36, *Ward v. Madison* R.T. 194-95.

Even if this conduct were not deemed fraudulent, however, it seems likely that it would be deemed an intentional violation of the Arkansas regulation, and that would be actionable as an intentional breach of McDougal's fiduciary duties.

A fiduciary is not automatically liable for violating the law. Good faith attempts to manage a corporation's affairs may not give rise to liability even if a statute or regulation is violated.²⁵⁵ But conversely, a fraudulent or intentional effort to violate a statute or regulation will almost certainly constitute a violation of a fiduciary's duty of care--indeed, as the *Brown* case illustrates, it may be criminal. Thus, while the business judgment rule is recognized in Arkansas,²⁵⁶ the rule obviously has no application to fraudulent or intentional attempts to violate the law.²⁵⁷

While this transaction looks like an intentional effort to violate the Arkansas regulation, and to cover up that violation, some evidence suggests that the parties might have thought the acquisition as structured would be lawful. Neither side in *Ward v. Madison* seriously urged that the transaction was unlawful. Hubbell, who paid some attention to the *Ward* trial and attended the closing arguments, doubts that Ward was a straw--at least as Hubbell understands the term:

Q. In 1985, did you give any thought whatsoever as to whether, given the terms as you understood them, Mr. Ward might be considered a straw man or nominee?

A. Yeah. You know, you use the word, and I remember it back in law school. But I didn't give it any consideration, you know. "Straw man" means, to me, somebody who you clear title through. So I don't think that's the way I would look at it, if I sold property, and you're trying to clear it to sell it through a straw man.²⁵⁸

255 E.g., *FDIC v. Benson*, 867 F. Supp. 512, 521-22 (S.D. Tex. 1994) (applying Texas law).

256 *Hall v. Staha*, 303 Ark. 673, 678, 800 S.W.2d 396, 399 (1990); *RTC v. Eason*, 17 F.3d 1126, 1133-34 (8th Cir. 1994) (applying Arkansas law).

257 3A William Meade Fletcher, *Cyclopedia of the Law of Private Corporations* § 1040, at 51-52 (rev. ed. 1994). No Arkansas case on point has been located. To establish liability under Texas law, however, a plaintiff must show that the fiduciaries "participated in acts that they knew were illegal at the time." *FDIC v. Benson*, 867 F. Supp. at 522.

258 Hubbell Interview, Dec. 27, 1995, at 22:17-26

In addition, the question was put to Latham, who testified in deposition that he believed the transaction was lawful:

Q. You said that Madison Financial could not have taken a deal as large as the I.D.C. deal that Mr. Ward brought because of regulations.

A. I think at that point in time that was correct.

Q. Madison Financial could have taken the deal, could it not, if it had received financing from someone other than Madison Guaranty?

A. Yes.

Q. And there was no violation of the regulations from Mr. Ward to receive financing from Madison Guaranty?

A. I don't think so, as long as Seth had the financial ability to assume that obligation on his own.²⁵⁹

Given the apparent attempts to conceal the substance of the arrangements between McDougal and Ward, one may question whether Latham seriously believed what he said; in any event, the conclusion he reached is of doubtful merit. Assuming *arguendo* that Seth Ward had the ability to assume the obligation on his own, two problems remain with Latham's position. First, factually speaking, Ward had no reason or incentive to pay the loan unless he could profit by doing so, for the loan was nonrecourse. Second, legally speaking, Ward's "financial ability to assume that obligation on his own" is not a defense where the transaction is structured to conceal a violation of a regulation limiting the ability of the financial institution to make the loan.

An Arkansas case decided a few years before the Castle Grande transaction, *United States v. Parsons*,²⁶⁰ illustrates the second point. Parsons was the treasurer of a school's credit union. He needed more money than the credit union could lawfully loan to him. Therefore, he convinced several teachers to take out loans in their own names and deliver most of the proceeds to him.²⁶¹ On appeal from his conviction for misapplication of credit-union funds and false entries, he argued that the jury should have received an instruction that he could be convicted only if the prosecution proved that he

²⁵⁹ Latham Deposition at 27.

²⁶⁰ 646 F.2d 1275 (8th Cir. 1981).

²⁶¹ *Id.* at 1276-77.

knew the other teachers lacked the ability and intent to repay their respective loans. The court rejected this argument, holding that where the straw is used to conceal violation of a legal limitation on lending, the financial condition of the putative borrower is irrelevant.²⁶²

All told, the evidence suggests that the RTC could reasonably state a claim against McDougal for fraud and for breach of his fiduciary duties. Perhaps McDougal could defend by arguing that he had a good-faith belief that the structure was lawful; at this point it is hard to determine how persuasive such a defense might be. In any event, such a claim, if brought against McDougal alone, would not be cost-effective.²⁶³

The evidence as to Ward is less compelling than the evidence as to McDougal (the intent to conceal is less clear), but on the strength of *Brown*, it appears that a claim might be stated for aiding and abetting in a fraud or for an intentional violation of the Arkansas regulation. Nevertheless, such a claim cannot properly be brought against Ward because he has been released.²⁶⁴

For purposes of this report, however, the ultimate question is not whether McDougal or Ward could profitably be sued, but whether the Rose Law Firm aided and abetted them in what looks like fraudulent or intentional misconduct.

2. The role of the Rose Law Firm.

The Rose Law Firm handled aspects of the Castle Grande acquisition. Of this there can be no doubt, despite the lack of files and the lack of recollection.

The extent of the Rose Law Firm's involvement in this acquisition is not well documented and has been further obscured by faulty memories. Seth Ward, who negotiated the acquisition for Madison Financial, denied that the Rose Law Firm had any involvement in the purchase of Castle Grande either on behalf of Madison Financial or himself--a statement that is demonstrably

262 *Id.* at 1279-80.

263 McDougal filed for bankruptcy in September 1991 and obtained an order of discharge on January 17, 1992 (PMS0532, PMS0552), well before the enactment of the RTC Completion Act of 1993. The order of discharge could be set aside only if the RTC could prove a fraud on the bankruptcy court; proof that McDougal defrauded someone other than the bankruptcy court would be of no avail.

264 Ward received a general release from the RTC when he settled *Ward v. Madison*, a settlement in which the RTC recovered \$325,000.

incorrect.²⁶⁵ He is not the only one who seems to have forgotten things: the Rose Law Firm lawyers who handled the transaction also have no recollection of it.²⁶⁶

Rose Law Firm records show that its engagement in this acquisition began in August 1985.²⁶⁷ Hubbell says that Ward referred the matter to the Rose Law Firm at McDougall's instruction.²⁶⁸ Recently discovered timesheets show that partner Thomas P. Thrash and former associate R. Davis Thomas, Jr. worked on this matter between August 6 and 20, 1985 and again between September 30 and October 18, 1985, spending a total of 17.1 hours on this matter.²⁶⁹ Other than these time records, however, the Rose Law Firm has virtually no record of this transaction.²⁷⁰

Despite the absence of records, the work of the Rose Law Firm can be reconstructed in part from the files and recollections of the lawyer who represented IDC in the transaction, Darrell D. Dover of the Little Rock law firm of Dover & Dixon. Dover says that the principals, as opposed to the lawyers, put together the deal. He identified IDC's principal as R. A. "Brick" Lile.²⁷¹

265 Seth Ward Interview, Apr. 29, 1994, at 1. Ward told the IG that he does not remember the Rose Law Firm doing any legal work for Madison Guaranty on the Castle Grande transaction or on anything else. IG Ex. III-35, at 2. Ward was not alone in denying the Rose Law Firm's role in the transaction. When asked about Castle Grande, other Madison Guaranty directors and officers did not mention the Rose Law Firm as having any involvement in the sale. E.g., Steven Cuffman Interview, Apr. 26, 1994, tape 1, at 34-35; Sarah Hawkins Interview, Apr. 11-14, 1994, at 71-72; Don Denton Interview, Apr. 28, 1994, at 7-8. Jim and Susan McDougall were deposed but each invoked the Fifth Amendment and declined to answer all questions.

266 Thrash Interview, Dec. 1, 1995, at 8:17-9:3, 10:22-11:18; Thomas Interview, Dec. 19, 1995, at 6:23-7:4, 8:13-17. Hubbell recalls the transaction but not having any role in it himself. Senate Hearing Transcript, Dec. 1, 1995, at 102:15-103:11; Hubbell Interview, Dec. 27, 1995, at 4:5-9:8.

267 See IG Ex. III-33, a Rose Law Firm "New Matter Master Form" dated Aug. 2, 1985. The form indicates that Webster Hubbell was the billing partner. IG Report at III-15, IG Exs. III-33, III-34, III-59, at 7-8; letter from Alden L. Atkins to Bruce A. Ericson, Oct. 31, 1995, at 4. Hubbell denies this. Hubbell Interview, Dec. 27, 1995, at 6:25-8:14.

268 Hubbell Interview, Dec. 27, 1995, at 8:15-9:8.

269 RIC-118693-701, RIC-118725-29. As noted in the text accompanying the chart on page 38 above, these hours cannot be reconciled with the dollar amounts on the invoices; the dollar amounts suggest that much more time actually was recorded.

270 No correspondence, drafts, notes or other papers of any sort have been located.

271 See IG Ex. III-40, at 2.

According to Dover, the principals left the "scrivener" work to Dover and to the Rose Law Firm, mainly Thomas P. Thrash. Dover said that others at the Rose Law Firm may have been involved as well, but he dealt principally with Thrash and cannot clearly recall dealing with lawyers other than Thrash. Dover has no clear recollection as to whether the purchaser was Madison Guaranty or Madison Financial or others. He does not have the final documents; the drafts he has mention both entities.²⁷²

The documents that Darrell Dover and the Rose Law Firm have produced do not deal at all directly with the arrangements between Ward and Madison Financial. The deeds mention both buyers; the purchase agreement mentions assignees; but someone who saw only these documents would not have notice of the arrangements between Ward and Madison Financial, much less responsibility for their creation.

Hubbell, however, stands in a different situation. While he says he did not work on this matter, he also says that he knew of the arrangements between Ward and Madison Financial, at least in broad outline, and he knew them shortly after the transaction closed. Hubbell knew of these matters because Ward discussed the transaction with Hubbell with some frequency. For example, Ward acquainted Hubbell with the terms of the September 3, 1985 memorandum:

Q. Let's turn to the next page, which says "Defendant's Exhibit 31" and also says "SW1-004." It's a memorandum dated September 3, 1985. Again, let me ask you if this is a document you saw in 1985 or 1986.

A. I may have seen it after the closing. Seth may have brought a copy home. So I can't say that I haven't seen it. Okay?

Q. Okay.

Do you have any recollection of discussing the terms of this document with Mr. Ward?

A. He discussed everything. So I mean -- I mean this specific document, no. But his deal with Madison, he talked about it all the time.

272 Darrell D. Dover Interview, July 18, 1995. Dover's firm represented John Latham when Latham was interviewed by the RTC Inspector General. IG Ex. III-29, at 1.

Q. Approximately how often would you see your father-in-law in this time period?

A. Fairly regularly. Not as often as after his accident. But fairly regularly.

Q. Again, focusing on '85, '86, could you be any more specific as to "fairly regularly"? Do you mean once a week?

A. At least once a week.²⁷³

Through these conversations, Hubbell came to know the terms of the arrangements between Ward and Madison Financial:

Q. You mentioned that you learned that Madison was going to lend him [Ward] the money to buy a part. Did you know anything beyond that, about the terms in which the money would be loaned to your father-in-law?

A. I learned that later on.

Q. But in 1985, you did not know these terms?

A. I probably did after it closed; but, you know, exactly when, I couldn't tell you.

Q. When you say you probably did after it closed, why is that? Is there a particular event that brought it to your attention?

A. Well, I mean the deals changed, you know; and so he would have told me that he was borrowing the money, you know, as opposed to Madison just buying it all and him getting a commission.

Q. At the point at which you learned he was borrowing the money and was buying part of the property, did you have any understanding as to whether he was borrowing 100 percent of the money needed to buy his part of the property or some lesser amount?

273 Hubbell Interview, Dec. 27, 1995, at 16:25-17:22.

A. My understanding was it was always 100 percent.

Q. Did you have any understanding as to whether it was recourse versus nonrecourse?

A. I believe -- you could tell me, but I believe it was nonrecourse. I believe that's been an issue. I can't tell you when I learned.

Q. What was your understanding as to the arrangement with respect to commissions on the sale of the property?

A. If I remember right -- but I may have learned this later on -- there was a written agreement between McDougal and my father-in-law. And I think in general it was 10 percent on anything he sold, 10 percent on any commercial real estate; and then a lesser percentage on residential real estate.

Q. When do you think you learned those facts?

A. It had to be sometime after the closing. My impression was that initially he was going to get paid when the deal closed, you know, like most real estate people. At some point, that changed.²⁷⁴

Hubbell also understood that Madison Financial could not buy all of the property in its own name:

Q. At this time, September 1985, what was your understanding, if any, with respect to the reasons why Madison was not going to buy the entire property itself?

A. My understanding was based on what Mr. Ward told me, that maybe whoever closed the loan was -- was that Madison had limits on what it could own in its own name, and so Mr. Ward was going to own part of it until it could be sold.²⁷⁵

The foregoing is fairly consistent with what Hubbell told the RTC's Inspector General, as summarized by an investigator:

274 Hubbell Interview, Dec. 27, 1995, at 15:1-16:15.

275 Hubbell Interview, Dec. 27, 1995, at 21:25-22:6.

HUBBELL said that WARD told him that he was negotiating on behalf of MADISON to buy the IDC property, which would then be split up between MADISON and WARD. HUBBELL said that ~~Ward may have told him that MADISON could only buy a portion of the money [sic], and that the limitation may have been regulatory.~~ HUBBELL recalled that Ward was negotiating the purchase as if he was the sole purchaser because the purchase ~~price would have been higher if the sellers thought that~~ McDUGAL was the actual purchaser. WARD also had told HUBBELL that his part of the purchase would be financed with money borrowed from MADISON GUARANTY.²⁷⁶

Exactly when Hubbell acquired all this information is unclear. He attributes most of it to after closing (October 4, 1985), but as set forth below, that might be incorrect.

It is much harder to say what other Rose Law Firm lawyers knew (if anything) about these matters. In the absence of evidence from the Rose Law Firm's files and lawyers, one must fall back upon evidence from other sources. ~~Of this there is plenty, chiefly because the arrangements between Ward and Madison Financial were the subject of extensive litigation in Ward v. Madison.~~ This evidence, unfortunately, does not clearly answer the question, presumably because the role (or lack thereof) of the Rose Law Firm was not an issue in the ~~case.~~ Nevertheless, there is much circumstantial evidence from which inferences can be drawn and arguments rebutted.

The circumstantial evidence revolves around two documents: the second version of the letter agreement between Ward and McDougal backdated to September 24, 1985; and the option to the 22.5 acres that the September 24, 1985 letter gave to Ward. There is evidence, albeit not conclusive, that Hubbell saw and perhaps commented upon the letter. There also is evidence that Mrs. Clinton had something to do with the creation of the option. Neither, however, showed up on timesheets or bills.

The second letter of September 24, 1985: According to Ward, McDougal prepared the first September 24 letter and McDougal's secretary,

²⁷⁶ IG Ex. III-69, at 6-7. Regarding his role in the acquisition, Hubbell wrote a letter to the FDIC in June 1989 stating that he had "not represented Mr. Seth Ward in connection with any issue or matter relating to his disputes with 'Madison Guaranty.' RTCKC42271; Hubbell Interview, Dec. 27, 1995, at 36:10-19.

Sue Strayhorn, typed it.²⁷⁷ This seems correct: the letter bears her initials and she confirmed this at trial.²⁷⁸

The more important question is who prepared the second and operative letter. Again, Ward's story varies. In his deposition, Ward said that he prepared the second letter but he does not recall who typed it.²⁷⁹ At trial, however, he was less sure of this:

Q. The second letter, dated September 24th, 1985, from Seth Ward to Jim McDougal, did you prepare this letter?

A. I think I had it prepared.

Q. By had it prepared, what do you mean?

A. Well, I either wrote it or dictated it or something.

Q. And had someone type it for you?

A. Yes.²⁸⁰

For a number of reasons, this may not be the entire story. The evidence presented below is far from conclusive, but a reasonable inference can be drawn that Ward prepared the letter in consultation with his son-in-law Webster Hubbell, then a Rose Law Firm partner.

The letter, and particularly the real property description attached to it, appear to be the work of a lawyer. The language is marked by legalese ("thereon," "commonly referred to as," "the aforementioned property," "the pro rata amount of the note," "the property or any portion thereof"). Ward is not a lawyer. He dropped out of Arkansas State Teachers College in 1941 to join the Marines; and by his own admission, "I don't like the fine print and I don't normally study what I'm signing carefully enough . . ."²⁸¹

277 Ward Deposition at 53. But see Ward's trial testimony, where he said he did not know who prepared this letter; he knew only that he had not prepared it. *Ward v. Madison* R.T. 37.

278 See *Ward v. Madison* R.T. at 194-95.

279 *Id.* at 53-54. Ward did not have a secretary. He speculated that his wife may have typed the letter.

280 *Ward v. Madison* R.T. 37.

281 Ward Deposition at 5, 7, 51. *Ward v. Madison* R.T. 5. On the other hand, the letter is ambiguous in some respects. One would expect greater clarity from a lawyer of Webster Hubbell's ability.

Webster Hubbell's secretary told the IG that she believed she typed this letter but could not otherwise recall the circumstances.²⁸² Hubbell said that Ward occasionally asked Hubbell's secretary to type things for him.²⁸³ As Hubbell described it, on occasion Ward would bring draft letters into the Rose Law Firm, then sit in Hubbell's office and drink coffee while Hubbell's secretary typed up the letters. Hubbell's secretary would then bring in the finished letter:

Q. And you [Hubbell] might have read it over and talked to him [Ward] briefly?

A. Yeah. Or he might have gave it to me to read it, or vice versa, or not at all.

Q. Okay. But with respect to this particular letter, do you have any recollection of whether you did read it and discuss it with Mr. Ward?

A. No.²⁸⁴

The Rose Law Firm lawyers working on the Castle Grande matter (Thomas P. Thrash and R. Davis Thomas, Jr.) state that they did not draft the letter and had not seen it before their interviews.²⁸⁵ They also recorded almost no time to this matter in September and they never recorded any time that references the preparation of this letter.²⁸⁶

The Rose Law Firm has indicated through counsel that, unbeknownst to the firm until much later, Webster Hubbell "often assisted Mr. Ward on various matters. However, Mr. Hubbell did not open client/matter numbers for those matters"²⁸⁷ Hubbell confirms that he represented Ward on various

282 IG Ex. III-134, at 2. The secretary, Martha Patton, could not recall typing the letter but recognized the type, the formatting of the second page and "her style of typing." She had no knowledge of the issues discussed in the letter.

283 *Id.* at 24.

284 Hubbell interview, Dec. 27, 1995, at 21:17-24. *See generally id.* at 19:18-22:16.

285 Thrash interview, Dec. 1, 1995, at 29:2-30:13. Thomas interview, Dec. 19, 1995, at 20-21.

286 RIC118693-701; RIC-118724-29.

287 Letter from Alden L. Atkins to Bruce A. Ericson, Oct. 31, 1995, at 11. Here, of course, a file was opened, but Hubbell was named billing partner, whereas Mrs. Clinton had been named billing partner for the other four Madison Guaranty matters opened earlier that year.

(continued...)

matters, denies that he did so with respect to Madison Guaranty and disputes the Rose Law Firm's assertion that it did not know of his work for Ward until after he left the firm.²⁸⁸

Hubbell states that the Rose Law Firm represented Madison Guaranty, Madison Financial and Seth Ward, both individually and as an agent or employee of Madison Guaranty, in this matter.²⁸⁹

Ward's accountant gave testimony suggesting that Webster Hubbell represented Ward with respect to matters concerning Ward's compensation for this deal. The accountant, Mark Schaufele, testified that he met with Ward and McDougal and an unidentified man at Madison Guaranty on Jim McDougal's birthday to discuss the tax ramifications of the Castle Grande transaction, particularly the tax ramifications to Seth Ward.²⁹⁰ There was discussion of how to apply rents from a portion of the property to Ward's debt to Madison Guaranty without having that rent become income to Ward. "They [presumably McDougal and the unidentified man] said they would take care of the collection of the rent and apply it directly against the interest."²⁹¹

Q. So the discussion was to work out how best Mr. Ward would have no taxable consequence from the purchase and flow through and sale by Madison?

A. Yeah, of that transaction, realistically, or now it was going to be handled from that standpoint.

Q. Were any decisions made?

287 (...continued)

See IG Ex. III-33, a Rose Law Firm "New Matter Master Form" dated Aug. 2, 1985. Webster Hubbell was the billing partner. IG Report at III-15, IG Exs. III-33, III-34, III-69, at 7-8; letter from Alden L. Atkins to Bruce A. Ericson, Oct. 31, 1995, at 4. Cf. Senate Hearing Transcript, Dec. 1, 1995, at 104:22-105:1, where Hubbell describes Mrs. Clinton as the billing partner for Madison Guaranty without distinguishing among the various matters.

288 Hubbell Interview, Dec. 27, 1995, at 4:23-5:24

289 IG Ex. III-69, at 8; Hubbell Interview, Dec. 27, 1995, at 27:7-28:3. In contrast, Thrash asserts that Ward was not a client of the Rose Law Firm for purposes of this matter. Thrash Interview, Dec. 1, 1995, at 8:17-9:3. The Rose Law Firm, through counsel, seems to agree with Thrash. Letter from Alden L. Atkins to Bruce A. Ericson, Oct. 31, 1995, at 11-12.

290 Mark Schaufele Deposition, May 27, 1988, at 5-7.

291 *Id.* at 9.

A. My recollection is, is that Jim McDougal suggested that he write a memorandum outlining their proposal as far as the purchase -- Mr. Ward's purchase, and then the option that Madison wanted to enter to buy it, to show to Mr. Ward so that he could take it to his attorney to see if that met with Mr. Ward's, you know, it was fine with Mr. Ward's attorney.²⁹²

Q. Have you had any other discussions with anyone other than Seth Ward concerning Mr. Ward's commissions?

A. At the time of the original transaction, I discussed it with Mr. Ward's attorney, Web Hubbell.

Q. Anyone else?

A. No.²⁹³

Hubbell or others at the Rose Law Firm performed various other services that relate to aspects of Ward's agreements with McDougal. For example, Davis Thomas' timesheet for October 18, 1985 indicates that he performed "RS [research] on what approvals, permits, etc. are necessary to operate sewer and water facilities; multiple TCFW [telephone conferences with] state agencies; Memo to Webb Hubbell."²⁹⁴ Also, the research later performed on the liquor permit issue was described as "an opinion Seth got from his attorney."²⁹⁵

Against the circumstantial evidence summarized above is Hubbell's express denial that he prepared the September 24, 1985 letter or represented Ward in connection with the Castle Grande matter.²⁹⁶ It appears as well that Hubbell recorded no time to the matter and was not listed on any bill, nor on

²⁹² *Id.* at 9-10

²⁹³ *Id.* at 13. In February 1986, McDougal referred to the Rose Law Firm as Ward's attorneys. IG Ex. III-63.

²⁹⁴ RIC118729. Thomas could shed no light on this, but he thinks the memorandum to Hubbell must have related to his sewer and water research. Thomas Interview, Dec. 19, 1995, at 13. Hubbell has no recollection of this and attributes the mention of his name to the fact that his relationship to Ward was well-known at the firm. Hubbell Interview, Dec. 27, 1995, at 10:24-12:2.

²⁹⁵ IG Ex. III-63. Richard Donovan does not remember any of the documents pertaining to his liquor research. IG Ex. III-68, at 3-4.

²⁹⁶ IG Ex. III-69, at 6-7. Hubbell Interview, Dec. 27, 1995, at 6:5-24, 19:18-21:24

anyone else's timesheets except for the October 18, 1985 timesheet of Davis Thomas, regarding sewer and water issues.²⁹⁷

Nevertheless, Hubbell is not precise about when he learned various things. He has testified and been interviewed numerous times, and one gets the impression that things he heard after the fact sometimes get muddled with things he learned in 1985. For example, his testimony about how the IDC/Castle Grande matter came to the Rose Law Firm has shifted. Before the Senate, he testified that he did not initially know of the Rose Law Firm's engagement with respect to Castle Grande:

Mr. Chertoff. And the Rose Firm was also engaged to do some work in connection with the Castle Grand [sic] development; is that correct?

Mr. Hubbell. Yes, it -- I didn't know that initially but I do now.²⁹⁸

As set forth above, however, in a more recent interview Hubbell said that Ward brought the matter to the Rose Law Firm and discussed that with Hubbell essentially contemporaneously.²⁹⁹

Similarly, Hubbell has been vague about when he learned of the Arkansas investment limitation. In his Senate testimony on December 1, 1995, Hubbell first suggested that he had contemporaneous knowledge of the transaction: "I wasn't party to the representation of Madison and my father-in-law in that acquisition, but I was aware of it generally."³⁰⁰ A few pages after this, however, he suggested that he may not have learned of the Arkansas investment limitation regulation until later: "I have grown to understand that."³⁰¹ And in his December 27, 1995 interview, he suggested that he knew of this limitation in September 1985.³⁰²

An alternative theory, advanced by the Rose Law Firm through counsel, is that John Latham, and not anyone at the Rose Law Firm, structured Ward's

297 RIC118729.

298 Senate Hearing Transcript, Dec. 1, 1995, at 110:4-8.

299 Hubbell Interview, Dec. 27, 1995, at 8:15-9:8, 14:10-16:15.

300 Senate Hearing Transcript, Dec. 1, 1995, at 102:15-103:11.

301 Senate Hearing Transcript, Dec. 1, 1995, at 107:5-11.

302 Hubbell Interview, Dec. 27, 1995, at 21:25-22:16.

participation in the Castle Grande transaction. After first discussing evidence that Thomas Thrash did not structure the transaction, the Rose Law Firm argues:

Mr. Latham, Madison Guaranty's president, had the regulatory and legal background to structure the transaction. (See James Alford Statement, Sept. 7, 1994 at 1, RTC IG Report Ex. III-153)

Mr. Latham explained in detail the reasons the IDC purchase was split, and he has no recollection of Rose working on the transaction. (John Latham Statement at 2-3, RTC-IG Report Ex. 29) The evidence shows that Madison masterminded the structure of the purchase, a possibility that the Inspectors General did not consider.³⁰³

For several reasons, this theory is implausible:

Latham's "regulatory and legal background" was not substantial; he had graduated from law school less than a year before the events in question and had never practiced law.³⁰⁴ The Alford statement is not to the contrary and has nothing to do with Castle Grande. Alford, an auditor with Frost & Company, CPAs, simply said that a year before the Castle Grande transaction, when Frost was invited to bid on becoming Madison Guaranty's auditor, he had met with Latham and recalled "being somewhat impressed with Latham because of his regulatory and legal background, and after the meeting I felt comfortable that Frost could successfully perform the audits."³⁰⁵

Whatever one might say about Latham's background, Ward and other witnesses testified in 1988 that Latham played no significant role in the Castle Grande transaction.³⁰⁶ Indeed, Latham's testimony about the September 24,

303 Rose Response to IG at 52-53 (footnote omitted).

304 In June 1983, when Latham joined Madison Guaranty as executive vice president, he was still in law school. *Ward v. Madison* R.T. 93-94. According to the clerk of the Arkansas Supreme Court, Latham joined the bar in 1984 and had his license suspended some time prior to 1992 for non-compliance with continuing legal education requirements and failure to pay dues. Harry Don Denton, in a deposition taken in *RTC v. Frost & Co.* in April 1990, described Latham as follows: "John Latham was quite talented, a great deal of skill and ability, diligence. Ability to get along with people. Was grossly inexperienced." Denton Deposition, April 10, 1990, at 23:25-24:4.

305 IG Ex. III-153, at 1.

306 Asked what Latham did, Ward testified: "He generally -- I don't know what he did. He was in the office with the door shut all the time." Asked if Latham was involved in the sale and development of the IDC property, Ward answered: "Not that I am aware of." Ward Deposition at 36:5-13.

1985 letter agreement was excluded as hearsay at the trial in *Ward v. Madison* because the principal basis for Latham's statements was things he had heard from McDougal.³⁰⁷

Harry Don Denton, who knew Ward well and had introduced Ward to McDougal, testified in 1988:

Q. Was Mr. Latham involved in the negotiations for the purchase of this property [Castle Grande]?

A. No.

Q. That would have been outside his area of responsibility?

A. I don't believe he had the contacts.³⁰⁸

Other evidence also suggests that Latham was not close to the transaction. On October 3, 1985, McDougal sent Latham a memorandum that read, in its entirety, as follows: "We will be funding the \$1,750,000 purchase of the 145th Street property next week. What is your cash situation?"³⁰⁹

Finally, Latham himself testified in 1988 that he never saw the second September 24, 1985 letter until May or June 1986 and never discussed the terms embodied in the letter with McDougal at all.³¹⁰ Indeed, Latham testified that he had never heard of Ward's commission arrangement until Ward told him about it in 1986.³¹¹

The option of May 1, 1986: Hubbell, Thrash and Thomas could not identify this as a Rose Law Firm document, say they did not prepare it and

307 *Ward v. Madison* R.T. 96-97.

308 Denton Deposition, May 24, 1988, at 20. See also *id.* at 58-61.

309 IG Ex. III-47.

310 Latham Deposition, June 8, 1988, at 16-20, 34-36. Sue Stravorn also testified that she never saw this letter until May-June 1986. *Ward v. Madison* R.T. 194-95.

311 *Id.* Thus, while Latham did explain in detail the Castle Grande transaction to the RTC IG, Latham's knowledge was hearsay and acquired after the fact. Latham's statement that the Rose Law Firm did not work on the transaction far from proving that Latham "masterminded" the transaction, tends to confirm that Latham was out of the loop.

could not identify the notaries who signed it as Rose Law Firm employees.³¹² Nevertheless, counsel for the Rose Law Firm has confirmed that this document was created at the Rose Law Firm and bears word-processing markings indicating that it was created by or for Mrs. Clinton.³¹³ In particular, the small letter "g" on the option stands for Mrs. Clinton.³¹⁴

The RTC recently propounded interrogatories to Mrs. Clinton on this subject. As indicated above, while Mrs. Clinton has not yet responded to these interrogatories (her counsel has promised to do so shortly), her counsel has indicated that she has reviewed the option (which is attached to the interrogatories) and does not recall it.³¹⁵

3. Analysis.

To be liable for aiding and abetting, one must be generally aware of his role as part of an overall illegal or tortious activity, and one must knowingly and substantially assist the principal violation.³¹⁶ There may have been a principal violation here, but there is no substantial evidence that the Rose Law Firm knowingly and substantially assisted in its commission.

Knowledge: Thrash and Thomas, who recall very little about the transaction, say they had no savings and loan experience, did not know of the Arkansas investment limitation regulation, did not know of the 1984 FHLBB Report of Examination or Supervisory Agreement, and did not know the terms

312 Hubbell Interview, Dec. 27, 1995, at 26:10-31:7. Thrash Interview, Dec. 1, 1995, at 33:4-34:12. Thrash, however, could not identify his own secretary either. *Id.* at 40:1-3. Thomas Interview, Dec. 19, 1995, at 23:21-25:25.

313 Compare SW1-063 through SW1-068 (Def. Ex. 3 in *Ward v. Madison*) and SW1-070 through SW1-074 with IG Ex. 40, at 16:31 (drafts of the purchase agreement prepared by the Rose Law Firm) and RTCKC41005-06 (litigation letter to Peat, Marwick, Mitchell and Company).

314 Counsel for the Rose Law Firm confirmed this on December 21, 1995. The inquiry was an outgrowth of a statement by Davis Thomas that the letter in this code stood for a particular attorney, although he could not remember his own letter, let alone the letters assigned to others. Thomas Interview, Dec. 19, 1995, at 16:8-17:7. That the letter "g" was associated with Mrs. Clinton tends to be confirmed by RTCKC41005-06, a letter she signed that also bears a "g."

315 On December 21, 1995, the RTC propounded a set of interrogatories to Mrs. Clinton inquiring about this. David E. Kendall, counsel for the Clintons, says that Mrs. Clinton has reviewed the options (there were several versions) but does not recall them. Memorandum of telephone conversation with David E. Kendall, Dec. 28, 1995, at 1. Kendall has promised that Mrs. Clinton will respond to the interrogatories as soon as possible.

316 *Restatement (Second) of Torts* § 876 (1979).

on which Seth Ward purchased his portion of Castle Grande.³¹⁷ No contrary evidence has been found. Hubbell knew in 1985 the essential terms of the transaction, including the aspects that arguably make it a straw-man arrangement, but he may not have learned these things until after the transaction closed.

If Hubbell had knowledge at a relevant time, it is possible that this knowledge might be imputed to the Rose Law Firm. As a matter of partnership law, that may happen if the partner who knows something but is not acting in the particular matter "reasonably could and should have communicated it to the acting partner."³¹⁸ Even so, it is unclear that the imputation of Hubbell's knowledge to the firm would mean that otherwise-innocent acts performed by other lawyers in the firm, who lacked actual knowledge of these matters, would somehow become "fraud" or "intentional misconduct" within the meaning of the statute of limitations extender. There is no relevant case law under the extender statute, nor much by way of analogy in cases construing the Uniform Partnership Act.

Substantial assistance: The argument here also is weak at best, although the reasons for this weakness differ as between the two principal documents.

The September 24, 1985 letter: Hubbell says that he did not draft the September 24, 1985 letter,³¹⁹ and he recently told the Senate that he "wasn't party to the representation of Madison and my father-in-law in that acquisition, but I was aware of it generally."³²⁰ The evidence summarized above is not entirely consistent with Hubbell's declaration that he "wasn't party to the representation of Madison and my father-in-law in that acquisition," but it suggests at most that Hubbell may have cast a fairly casual eye over the September 24, 1985 letter.

The May 1, 1986 option: The option has less immediate significance than the September 24, 1985 letter. The option did not assist in the closing of the acquisition. It, unlike the letter, was created many months after the transaction closed. The option, unlike the letter, does not prove any awareness on the part of its author of Ward's arrangements with Madison Financial. Such

317 Thrash Interview, Dec. 1, 1995, at 4:20-5:12, 7:23-26, 23:25-24:25, 24:26-25:20, 31:13-22, 32:1-12. Thomas Interview, Dec. 19, 1995, at 5:4-12, 17:13-19:10, 23:3-7, 28:15-29:12.

318 1 Alan R. Bromberg and Larry E. Ribstein, *Bromberg and Ribstein on Partnership* § 4.06, at 4:73 (1994), quoting Uniform Partnership Act § 12 (1914).

319 IG Ex. III-69, at 6-7.

320 Senate Hearing Transcript, Dec. 1, 1995, at 102:22-103:2.

awareness could be inferred only if one credits the Latham/Young view that the option was an attempt to obtain capital-gains treatment for Ward's commissions. If, instead, one credits Ward's view that the option had nothing to do with the commissions (as the jury in *Ward v. Madison* obviously did), then the author of the option need not have known anything about Ward's commissions, let alone his 100 percent financing or the other terms embodied in the September 24, 1985 letter. For these reasons, the option seems at most tangentially related to the acquisition itself.

The option might be related, however, to an effort to document Ward's rights. Ward and others have testified to such an effort, noting the need to have some written evidence for the FHLBB examiners to see of Ward's entitlement to the commissions.³²¹ Hubbell says that Ward was anxious about whether he would be paid.³²² In such circumstances, it would not be unusual to ask a lawyer to help reduce one's position to writing. Again, however, this theory makes sense as applied to the option only if one credits the view that the option bore some relationship to Ward's commissions.

If this view is accepted, then the option might be deemed a rather opaque and perhaps misleading means of documenting Ward's entitlement to commissions. But, as noted, this is a theory the jury in *Ward v. Madison* rejected, and it suffers from a number of problems, starting with its inconsistency with the September 24, 1985 letter and going on to its dependence on Latham and Young, witnesses whom it would be easy to impeach.³²³

Beyond this, the theory that Ward or McDougal wanted to have the Rose Law Firm document the terms that (arguably) make Ward a straw man is hard to reconcile with the fact that in other respects McDougal and Ward seem to have resorted to self-help rather than advice of counsel. Certainly the series of loans that they entered into in the spring of 1986 (\$400,000 from Madison Guaranty to Ward; \$300,000 from Ward to Madison Financial; and approximately \$70,000 running in both directions) reflect a fairly unusual approach to documenting Ward's entitlement to commissions. There is no evidence that the Rose Law Firm had any hand in these loans, and it is hard to imagine that any competent lawyer could have recommended this course of action.

321 *Ward v. Madison* R.T. 27-29, 49-54, 101-02, 114-15.

322 As noted above, Seth Ward told Webster Hubbell in the spring of 1986 that he "had some sense Madison was having trouble" and was "very anxious" about whether he was going to be paid the commissions he was owed. Hubbell interview, Dec. 27, 1995, at 43:21-44:12.

323 Latham pled guilty to bank fraud. Young's problems as a witness are much less serious but there are a number of inconsistencies in his testimony.

The money received by the Rose Law Firm: The amount of money paid to the Rose Law Firm for its Castle Grande work (\$4,670.35) is not substantial. Work was performed for the money, at least with respect to the liquor and sewage issues, and the initial review of the purchase agreement.

Missing documents: The Rose Law Firm did not have a centralized system of opening or maintaining files; instead, matters were left to the discretion of individual lawyers.³²⁴ The "bright line" approach taken to the statute of limitations in Arkansas has made long-term document retention by law firms less customary than might be true elsewhere. In Arkansas, as in some other states, the courts have been reluctant to develop exceptions to the statutes of limitations. While in some states (e.g., California), various tolling doctrines make it exceedingly difficult to render advice on how long one must keep documents, in Arkansas this is not true. As recently as 1991, the Arkansas Supreme Court, in a legal malpractice case, refused to adopt a variety of tolling doctrines, stating as follows:

There is yet another significant reason we do not retroactively adopt the "discovery rule," "date of injury rule," or "termination of employment rule." Many abstractors, accountants, architects, attorneys, and other similar professionals surely have relied on our traditional and long-standing rule. In doing so, they had no reason to keep records for longer than three (3) years. As a consequence, if we retroactively changed the rule, they might easily have no materials to use in their defense.³²⁵

Summary: The only solid evidence tying the Rose Law Firm to this acquisition is evidence of the innocent activity of participating in the drafting of the purchase agreement. While some evidence suggests that Hubbell could have had a role in the drafting of the September 24, 1985 letter between McDougal and Ward, nothing proves he did, much less that he did so knowing it to be wrong. Similarly, while Mrs. Clinton seems to have had some role in drafting the May 1, 1986 option, nothing proves she did so knowing it to be wrong, and the theories that tie this option to wrongdoing or to the straw-man arrangements are strained at best.

324 Thomas Interview, Dec. 19, 1995, at 30-31; Hubbell Interview, Dec. 27, 1995, at 41:16-43:20.

325 *Chapman v. Alexander*, 307 Ark. 87, 817 S.W.2d 425, 427 (1991). Of course, nothing in this opinion, or elsewhere, would justify spoliation of evidence, such as has been suggested recently in the press, should that be proved. The only point being made here is that discarding files before investigations began and subpoenas were issued might be justifiable. Therefore, without more, the non-existence of certain files today is not proof of actionable wrongdoing.

The evidence taken as a whole does not amount to convincing proof that the Rose Law Firm knowingly aided and abetted a fraud, or a scheme to circumvent the Arkansas investment limitation regulation. This conclusion does not necessarily mean that the evidence exonerates anyone; it simply means, given the applicable legal standards and the statutory mandate under which the RTC operates, that no reasonable basis has been found to recommend the filing of a claim relating to the acquisition of Castle Grande against the Rose Law Firm.

D. The retainer.

As noted, for a time the Rose Law Firm received a \$2,000 a month retainer from Madison Guaranty. The press has suggested that then-Governor Clinton personally solicited this retainer from McDougal and picked up the money monthly.³²⁶ The suggestion is made that the retainer was paid because the Clintons wanted the money, rather than for services rendered.

This suggestion seems wrong for at least three reasons:

First, the retainer was treated as an advance fee payment for services to be rendered rather than a "true" retainer (a fee paid regardless of whether services are rendered, in effect, a fee for remaining available).³²⁷ Consistent with this interpretation, the Rose Law Firm deposited the retainer into a trust account, at least starting in February 1986.³²⁸ A "true" retainer need not be deposited into a trust account, because it is a payment for being available rather than an advance on services.

Second, the available evidence shows that services were rendered and that, when the representation was nearing an end, the unused portion of the retainer was returned to Madison Guaranty (indeed, perhaps while Madison Guaranty still owed the Rose Law Firm some money for the Babcock and Tulsa Econolodge matters). Thus, the suggestion that the retainer was some sort of gratuity, or was handled improperly, lacks foundation.

326 *Los Angeles Times*, Nov. 14, 1983. Cf. Strayhorn Interview at 45; Davidson Notes of Raglin Interview, May 11, 1994. The President states that he did not pick up the money. Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 17(f), at 32.

327 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 17(d), at 34-35 ("I don't recall who negotiated the retainer arrangement" (this was in fact simply a prepayment of fees and expenses, with any excess to be refunded to the client)."). This distinction is explained in Charles W. Wolfram, *Modern Legal Ethics* § 9.2.2, at 505-06, (1986).

328 RLF2-02995-96.

Third, as described above, McDougal's Madison Bank had refused to pay the Rose Law Firm in full for litigation services rendered in 1981 and 1982. Given this prior experience with McDougal, the Rose Law Firm could hardly be blamed for seeking advance payment before agreeing to represent a McDougal entity once again.

For these reasons, and in light of the small amount of money at issue, ~~further investigation of the retainer does not seem warranted.~~

VII. CONCLUSION.

The evidence does not provide a basis consistent with the extender statute on which to assert claims against the Rose Law Firm that could be pursued in a cost-effective manner. Accordingly, it is recommended that no further resources be expended on this part of the investigation.

VIII. APPENDICES.A. Appendix A: Subpoenas served on the Rose Law Firm.

Two subpoenas were served on the Rose Law Firm, one dated February 9, 1994 and the other dated August 31, 1994.

The subpoena dated February 9, 1994 called for:

1. Any and all documents in your possession, custody or control for the years 1982 through the present that reflect, refer or relate to the operations or management of Madison and/or MFC and their lending practices and transactions, including, but not limited to, the following:

1. All documents relating directly or indirectly to services rendered by you to Madison, MFC, and/or any related entity;

2. All documents relating directly or indirectly to legal opinions rendered by you to Madison, MFC, and/or any related entity;

3. Madison and/or MFC records;

4. Loan files, including, but not limited to, all attorney notes, closing binders, correspondence, billing statements, legal opinions, appraisals, financial statements or borrowers, and internal and external memoranda relating to the loan transactions;

5. Documents which reference Madison and/or MFC;

6. Documents reflecting the appointment of individuals or entities to positions as officers or directors of, or counsel to, Madison and/or MFC;

7. Documents relating to the incorporation or formation of Madison and/or MFC;

8. Board of Directors minutes for Madison and/or MFC;

9. Loan Committee minutes for Madison and/or MFC;

10. Written or oral communications with regulatory examiners;

11. Written or oral communications with outside or inside auditors;

12. Written or oral communications (including legal opinions or other memoranda) with, to or received from other Madison or MFC attorneys, including in-house attorneys and other outside law firms or counsel;

13. Organizational charts of Madison and/or MFC;

14. Audit Committee minutes for Madison and/or MFC;

15. Billing statements, invoices, and time sheets for, and/or referencing, your work performed for Madison and/or MFC; and

16. Retention agreements, engagement letters, and/or any other agreements between you and Madison and/or MFC.

II. Any and all documents in your possession, custody or control for the years 1982 through the present not covered by any prior request that reflect, refer or relate to Madison and/or MFC, including, but not limited to, the following:

1. Correspondence, internal memoranda or personal files;

2. Communications with employees of Madison and/or MFC;

3. Communications with state or federal regulatory agencies;

4. Board of Directors and Committee meetings for Madison and/or MFC, both formal and informal (including advice memoranda, minutes, personal notes, progress reports, strategy plans, policy and procedure guides, loan packages and presentations); and

5. Legal opinions, correspondence, documents reflecting legal research and the product of legal research, attorney notes, communications with Madison and/or MFC relating to legal opinions rendered or legal research performed.

Rider to subpoena dated Feb. 9, 1994. Most of the 44 boxes we received were produced in response to this subpoena.

To be sure that we have asked for everything of possible relevance, the RTC issued a second subpoena in August 1994. This subpoena, dated August 31, 1994, covered the following subjects:

1. Any and all documents referring or pertaining to Whitewater Development Company, Inc.

2. Any and all documents referring or pertaining to
 - a. Campaign committees or committees having any political or legislative purpose established by or for the benefit of William J. Clinton, including but not limited to Mr. Clinton's 1984 campaign committee.
 - b. James B. McDougal and/or Susan McDougal
 - c. Rolling Manor, Inc.
 - d. Flowerwood Farms, Inc.
 - e. Riley-McDougal (partnership).
 - f. Great Southern Land Co.
 - g. Park Place, Inc.
 - h. McDougal and Associates.
 - i. Tucker-Smith-McDougal.
 - j. Smith-McDougal.
 - k. Kings River Land Co., Inc.
 - l. Pembroke Manor.
 - m. Madison Marketing.
 - n. Earth Movers, Inc.
 - o. Ozarks Realty Co.
 - p. Ozark Air Services.
 - q. Arkansas Ventures.
 - r. Chris Wade & Associates, Inc.
 - s. Appraisal Associates, Inc.
 - t. International Community Development Corp.

Rider to subpoena dated Aug. 31, 1994. In response, the Rose Law Firm, through counsel, offered to produce documents pertaining to Bobby Bratton, Campobello, Madison Bank & Trust Company and Chris Wade. The Firm also indicated that it had nothing whatsoever pertaining to most of them, including Appraisal Associates; Arkansas Ventures; the various Clinton campaign organizations; Castle Grande; Dixie Continental; Earth Movers; Flowerwood Farms; Great Southern Land Company; International Community Development Corporation; Kings River Land Company, Inc.; Maplecreek Farms; McDougal & Associates; 101 River Development; Ozark Air Services; Pembroke Manor; Riley-McDougal Partnership; Rolling Manor; Smith-McDougal Partnership; Tucker-Smith-McDougal Partnership; and 1308 Main Street.

B. Appendix B: Comparison of two Castle Grande side agreements between Seth Ward and Madison Financial.

Here is a comparison of the two letters, both dated September 24, 1985, signed by Seth Ward and Jim McDougal. Underlining indicates words added in the second version of the letter; strikeouts indicate words removed in the second version of the letter:

Seth Ward
48 River Ridge
Little Rock, Arkansas 72207

September 24, 1985

Mr. Jim James B. McDougal, President
 Madison Financial Corporation
 16th and Main Streets
 Little Rock, Arkansas 72201

Dear Jim Mr. McDougal:

This ~~letter~~ is to set forth our agreement concerning the property commonly referred to as all the land owned by the Industrial Development Company of Little Rock and certain improvements thereon.

On or about the 13th day of September, 1985, Madison Guaranty Savings and Loan Association agreed to acquire all of the Industrial Development Company of Little Rock's property except the grounds and building commonly referred to as the Timex Building. In the agreement, Madison has the right to assign its rights ~~to that agreement~~ to any entity or individual. As part of our agreement, I have agreed to take title to all of the assets ~~and property of the aforementioned property that is located~~ immediately north of 145th Street, the water and sewer improvements, and the water and sewage sewer treatment ponds, including the one located south of 145th Street. Madison Guaranty Savings and Loan Association will agree to lend me on ~~a non-recourse basis~~ the purchase price for this property secured only by a mortgage of those parcels and the sewer and waterworks water works.

Madison Guaranty will pay \$35,000.00 to me to have an option for
at least 270 days from the date of acquisition to purchase the
property from me at any time for the in whole or in part, for at
least the pro rata amount of the note plus all accrued interest;
except one parcel described as follows:

Approximately 22 1/2 acres located and referred to
as the Northeast Quadrant of the interchange of
Highway 65 and 145th Street. More specifically
described in the attached legal description which is a
part of this agreement.

It is the intention of both Madison and myself to attempt to develop all of the property acquired from I.D.C., and sell it as quickly as possible. If ~~there is any purchase of the property or any portion thereof~~ is sold during the 270 day period, the sale price will be mutually approved by me and Madison Financial Corporation. The proceeds of any the sale will be applied toward the promissory note, less a ~~ten percent~~ 10% sales commission to be paid to me ~~if the property is sold by me, or at~~. At Madison's discretion, ~~the any particular piece of property may be deeded back to Madison prior to the execution of the sales transaction. If it is sold by anyone else, then the proceeds will go to Madison Guaranty, less the commission to the other seller, and a four percent commission to me.~~ a sales transaction.

It is also agreed, in addition to the salary I am receiving from Madison Guaranty, ~~on all property acquired from I.D.C. sold either by me or by Madison Guaranty after the exercise of Madison's option, or on that portion of the property already acquired by Madison from I.D.C., I shall receive a ten percent commission on said sale if it is sold by me, and four percent commission if it is sold by anyone else.~~ Financial Corporation, I will receive 10% sales commission on all property sold, regardless who sells it, except residential property that will be located south of 145th Street, in which case I will receive 4% commission if sold by any other person.

During the term of the option period, all of the net revenues of the ~~waterworks~~ water works and sewer department shall be forwarded directly to Madison Guaranty for application toward the note, unless such facilities are sold sooner. Madison Financial Corporation will also be responsible for all taxes, special assessments, dues, insurance premiums, etc. during the period of this option.

I would appreciate your acknowledging and agreeing to the terms of ~~this~~ the letter of agreement.

Sincerely,

Seth Ward

SW:ss

Acknowledged and accepted,

~~Jim~~ James B. McDougal, President
Madison Financial Corporation

**A REPORT ON THE
ROSE LAW FIRM'S CONDUCT OF
ACCOUNTING MALPRACTICE LITIGATION
PERTAINING TO
MADISON GUARANTY SAVINGS & LOAN**

**Prepared For
RESOLUTION TRUST CORPORATION**

**Prepared By
PILLSBURY MADISON & SUTRO LLP
225 Bush Street
San Francisco, California**

December 28, 1995

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I. INTRODUCTION.

Pillsbury Madison & Sutro LLP ("PM&S") was retained by the Resolution Trust Corporation ("RTC") to assist in the investigation of possible civil claims against individuals and entities associated with Madison Guaranty Savings & Loan Association of McCrory, Arkansas ("Madison Guaranty").¹ As part of this investigation, PM&S was asked to investigate certain issues with respect to the legal services rendered by the Rose Law Firm of Little Rock, Arkansas. Those services included services rendered to Madison Guaranty before its failure in February 1989 and services rendered to the Federal Deposit Insurance Corporation ("FDIC") and the RTC as successors in interest to Madison Guaranty after its failure. This report summarizes the scope and results of the investigation of the Rose Law Firm's services to the FDIC and the RTC after Madison Guaranty's failure. In particular, this part of the investigation focuses on the Rose Law Firm's representation of the FDIC and the RTC in an accounting malpractice action brought on behalf of Madison Guaranty against its former auditors, Frost & Company.²

II. NATURE AND SCOPE OF THE INVESTIGATION.

A. Sources of information.

Documents were subpoenaed from the Rose Law Firm. The Rose Law Firm produced approximately 49 banker's boxes of documents, of which approximately 44 banker's boxes pertained to the subject of this report--the Frost & Company litigation of 1988-1991. Most of the remaining documents pertained to services rendered before Madison Guaranty failed, or to services rendered to other clients on matters that fell within the scope of the subpoenas.

Documents also were subpoenaed from several dozen other persons. For a full list of subpoenaed individuals and entities, see part II of the *General*

1 The scope and purpose of the investigation is set forth in the RTC's Order of Investigation dated February 4, 1994.

2 The Frost & Company action originally was brought by the Memphis, Tennessee law firm of Gernsh & McCreary and was styled *Madison Guaranty Savings & Loan Association, et al. v. Frost & Company*, No. 88-1193 (Pulaski Cty. Cir. Ct.). After Madison Guaranty failed, the action was removed to United States District Court, and the FDIC was substituted for the plaintiffs. The action then was styled *FDIC v. Frost & Company*, No. LR-C-89-0216 (E.D. Ark.). In March 1989, the FDIC replaced the Gernsh firm with the Rose Law Firm because of concerns about the Gernsh firm's representation of other clients in matters adverse to the FDIC and other bank regulatory agencies. Later in 1989 the RTC was substituted for the FDIC, and the case became *RTC v. Frost & Company*, under the same docket number. Hereinafter, the case will be referred to as "*RTC v. Frost & Co.*"

Report on the Investigation of Madison Guaranty Savings & Loan and Related Entities (December 1995).

This report makes extensive reference to the Report of Investigation dated August 3, 1995 prepared by the RTC's Office of Inspector General and the bound volumes of exhibits thereto, which included sworn statements and notes of interviews of a number of additional witnesses.³

B. Issues examined.

Initially, this part of the investigation focused on work that the Rose Law Firm performed before Madison Guaranty's failure. There were several reasons for this. First, such work was more likely to have caused a loss for which the RTC could seek to recover in litigation. Second, the RTC's Office of Inspector General already was investigating the Rose Law Firm's alleged conflicts of interest and overbilling in connection with work for Madison Guaranty after its failure.⁴ Therefore, the initial focus was on the Rose Law Firm's work for Madison Guaranty before Madison Guaranty went into conservatorship on or about February 28, 1989.⁵

Later, after the issuance of the report of the RTC's Office of Inspector General in August 1995, PM&S was asked to review the IG Report and the files of *RTC v. Frost & Company* with a view toward determining whether the RTC might have a cost-effective claim against the Rose Law Firm based on its handling of that litigation. The results of that part of the investigation are covered in this report.

III. RESULTS OF THE INVESTIGATION.

Between the time the Rose Law Firm was substituted in and the time the *Frost* case settled, the Rose Law Firm developed an impermissible conflict of interest, which it neither fully disclosed to its client, the RTC, nor had waived. Nevertheless, the conflict does not seem to have prejudiced the RTC, as the *Frost* case seems to have been settled on reasonable terms. A claim could be asserted against the Rose Law Firm with respect to the conflict of interest seeking to recoup some of the attorneys' fees that it received from the RTC, but

3 The Report of Investigation dated August 3, 1995 prepared by the RTC's Office of Inspector General with respect to the Rose Law Firm is cited frequently below. For example, a citation to "IG Report at III-15" is a reference to page 15 of volume III. Similarly, a citation to "IG Ex. III-35, at 2" is a reference to page 2 of exhibit 35 to volume III.

4 See generally *Adair v. Rose Law Firm*, 867 F. Supp. 1111 (D.D.C. 1994).

5 That work will be covered in another report.

such a claim would be difficult to prosecute, might well not succeed and, win or lose, would cost more to prosecute than the probable maximum recovery. Thus, the institution of legal proceedings against the Rose Law Firm by the RTC does not seem warranted.

IV. ANALYSIS.

This part of the investigation focused primarily on two questions:

1. Did the Rose Law Firm engage in actionable misconduct, primarily with respect to possible conflicts of interest?
2. If so, was the RTC damaged by that conduct?

Both questions are relevant to the ultimate issue of whether the RTC should institute legal proceedings against the Rose Law Firm. The two issues will be presented separately, starting with the issue of liability for possible conflicts of interest.

A. Possible liability for impermissible conflicts of interest.

1. Background and scope limitations.

The issue here is whether the Rose Law Firm had an impermissible conflict of interest during any part of the period that it represented the FDIC or the RTC as conservator of Madison Guaranty in prosecuting an action for accounting malpractice against the firm of Frost & Company and its directors. The malpractice action had been filed in early 1988 on behalf of plaintiffs Madison Guaranty and Madison Financial Corporation, its wholly owned subsidiary ("Madison Financial"). Plaintiffs were initially represented by Jeffrey Gerrish and the Memphis law firm of Gerrish & McCreary.

On February 28, 1989, the FDIC was named conservator for Madison Guaranty. Actual intervention occurred on March 2, 1989. Shortly after enactment of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA")⁶ in August 1989, Madison Guaranty came under the control of the RTC.

In March 1989, the FDIC concluded that it would replace Gerrish & McCreary in the *Frost* suit because of potential conflicts. On or about March 27, 1989, the Rose Law Firm was picked by the FDIC as new counsel in the case. The Rose Law Firm thereafter represented the FDIC and later the

6 Public Law No. 101-73, 103 Stat. 364.

RTC as successor to Madison Guaranty until the *Frost* case was settled in April 1991.

This analysis does not consider events occurring after April 1991 or policies and guidelines of the RTC pertaining to conflicts of interest to the extent they were issued after April 1991. Accordingly, the analysis is limited to the following:

1. Model Rules of Professional Conduct, as adopted by the Arkansas Supreme Court, December 16, 1985;⁷
2. "Guide for Legal Representation," FDIC, June 1989;⁸
3. RTC regulations at 12 C.F.R. Part 1606, effective as of February 5, 1990;⁹
4. "A Law Firm's Guide: How to Be Considered for Retention by the FDIC and RTC," May 1990;¹⁰ and
5. "Guidelines of the FDIC/RTC With Respect to Conflicts of Interest and Confidentiality and General Policies of Waiver Favored by the Outside Counsel Conflicts Committee," May 2, 1990.¹¹

The RTC/FDIC guidelines and regulations do not add substantially to the meaning of "conflict" as used in the Arkansas Model Rules. The RTC/FDIC materials, however, do articulate a higher requirement for disclosure than do the Model Rules, in light of the reservation by RTC/FDIC of the right to determine whether there is a conflict in a particular situation.

There are also various Legal Services Agreements between the agencies and the Rose Law Firm.

2. Conflict issues.

Rather than recite the lengthy "facts" material to the conflict issues, all of which are contained in the Inspector General's Reports, it is sufficient to refer

7 IG Ex. I-1.

8 IG Ex. I-2.

9 IG Ex. I-3.

10 IG Ex. I-4.

11 IG Ex. I-7.

briefly to the relationships that bear on the conclusions that follow. Further facts will appear in the discussion of the reasons for a conclusion that a particular relationship created a conflict. The relationships--professional, familial and client-lawyer--are the following:

1. The Rose Law Firm represented RTC/FDIC as conservator of Madison Guaranty in litigation against Frost & Company from March 1989 through April 1991.
2. Webster Hubbell during the time in question was a member of the Rose Law Firm.
3. Hubbell is Seth Ward's son-in-law and is a brother-in-law of Seth Ward II.
4. Hubbell during the time in question had various business relationships with Ward and his son (Seth Ward II).
5. The Rose Law Firm through Hubbell and others represented Seth Ward in a variety of matters before, during and after the firm's representation of RTC/FDIC in the *Frost* litigation, including the following:
 - a. Rose attorney Thomas Thrash in September-October 1985 represented Madison Guaranty and Ward in the transaction by which Madison and Ward acquired from Industrial Development Corporation ("IDC") the property that became known as Castle Grande, in connection with which Madison Guaranty made loans to Ward.¹²
 - b. Hubbell in December 1986 apparently helped Ward frame his denial of liability to Madison Guaranty on certain notes arising from the above transaction.¹³
 - c. The Rose Law Firm through Hubbell in 1988 represented P.O.M. Inc. (a business owned by the Wards) and Seth Ward II in garnishment proceedings arising from a judgment in favor of Seth Ward and against RTC/FDIC as conservator of Madison Guaranty.
 - d. The Rose Law Firm through Hubbell assisted Ward in 1990 in an agreement with Ward's counsel (Alston Jennings and his law firm) that Ward

12 See IG Ex. III-69 (Interview with Webster Hubbell), at 7. But see Thrash Interview, Dec. 1, 1995, at 8-9 (denying that Ward was a client).

13 See IG Ex. III-133 (Letter from Hubbell to Denton).

would "pay or bond a final judgment the RTC may obtain" against Ward in the litigation between Ward and the RTC.

6. The Rose Law Firm in 1989 hired as a law clerk and then as a lawyer Patricia Heritage, formerly employed by Madison Guaranty and Madison Financial.

7. The Rose Law Firm, while the *Frost* case was pending and being prosecuted by the Rose Law Firm on behalf of the RTC, represented Precision Industries, of which James Alford (an individual defendant in the *Frost* case) was president.

8. The Rose Law Firm in 1985 represented Madison Guaranty before the Arkansas Department of Securities.

3. The *Frost* case.

Frost & Company had been retained in 1984 and 1985 to conduct audits of Madison Guaranty and subsidiaries. Two audits were conducted and completed covering 1984 and 1985.

An FHLBB examination begun in March 1986 criticized Madison Guaranty management for diversion of resources, including loans to insiders.¹⁴ The reports referred to poor underwriting of loans and inadequate or non-existent documentation of loans. New management was installed at Madison Guaranty. The "Big 6" accounting firm now known as KPMG Peat Marwick was retained to determine the extent of damage done by the prior management. The Borod & Huggins law firm was engaged to investigate the prior management's irregular business practices and consider possible legal claims for damages. Jeffrey Gerrish, initially with Borod & Huggins and later with his own firm, concluded that Frost & Company had potential malpractice liability. A suit against Frost was authorized. In addition to Frost, the suit named as individual defendants the directors of Frost, including James Alford.

The plaintiffs' theory of malpractice was that Frost had failed to perform an adequate review of loan files and as a result established an inadequate loan loss reserve; an adequate loan loss reserve at the time would have rendered Madison Guaranty insolvent and regulators would have closed the institution down. The damages claimed were based on the loans, made after the institution should have been closed, that ultimately defaulted.¹⁵

14 IG Ex. III-52 (FHLBB 60-Day Interim Report, examination of March 4, 1986, dated May 8, 1986); IG Ex. III-53 (FHLBB Summary Report of Examination of March 4, 1986).

15 IG Ex. III-68 (Statement of Richard Donovan), at 10-11.

For evidence of malpractice liability, plaintiffs expected to rely in part on evidence that the auditors had not properly reviewed files of certain loans made prior to the audit. The plaintiffs' theory was that these files, if properly reviewed, would have put the auditors on notice that the loans were poorly underwritten. For damages, plaintiffs relied on non-performing loans made during the "damage window," a period of roughly a year between Madison Guaranty's receipt of Frost's first audit report and Madison Guaranty's receipt of information from the FHLBB examiners that Frost's work might have been erroneous.¹⁶ Among the loans made during the damages window were loans to Ward that were in part roll-overs of earlier loans made in connection with the purchase by Ward and Madison Financial of the Castle Grande property from IDC.

Richard Donovan, a Rose Law Firm lawyer who worked on the *Frost* case, stated that in preparing the case they focused on non-performing loans that would have "jury appeal", such as "loans to insiders, which a jury would readily conclude should not have been made."¹⁷ Ward's loans were initially on the list as such.¹⁸

The *Frost* case was settled in February 1991, shortly after a motion to compel production of the Ward loan files and other documents had been granted.¹⁹ At some point, however, Rose Law Firm lawyers made a decision to drop Ward's loans from the damage list. This was done, it was said, because in 1988 Ward had won a case against Madison Guaranty in a trial court for real estate commissions on sales of Castle Grande properties in which Madison Guaranty had counterclaimed to recover an outstanding note or notes. The lawyers concluded that Frost would have a good argument that it was overreaching for the RTC to seek from Frost amounts that another jury had found did not have to be repaid.²⁰

16 *Id.*

17 IG Ex. III-68 (Statement of Richard Donovan), at 11.

18 See IG Ex. III-146 (Related Party Loan Chart); III-Ex. 147 (Loan Loss Chart).

19 IG Ex. III-110 (Statement of Benita Seliga), at 4.

20 IG Ex. III-68 (Statement of Richard Donovan), at 12. RTC in-house lawyer April Breslaw, who had principal responsibility for monitoring the case for the RTC, recalls no discussion of dropping the Ward loans from the damage list. Her impression (after many years) is that the Ward loans were "evidence of the type of problems at Madison Guaranty that Frost should have found in their audits." IG Ex. III-93 (Statement of April Breslaw), at 9.

4. Conclusions.

1. The Rose Law Firm had a conflict under the Arkansas Model Rules of Professional Conduct in continuing with representation of RTC/FDIC in the *Frost* case in light of the facts that (a) Seth Ward was at that time a current client of the Rose Law Firm, (b) the Rose Law Firm had represented Madison Guaranty and Ward in the acquisition of the Castle Grande property from IDC, in which questionable loans had been made to Ward, and (c) the Rose Law Firm had in its employ an attorney, Patricia Heritage, a former employee of Madison Guaranty, who while at Madison Guaranty may have created minutes of board meetings that never took place, and who was a potential witness in the *Frost* case. Because there were conflicts under the Model Rules, there were also conflicts under the various RTC/FDIC guides and regulations.²¹

2. The Rose Law Firm was required but failed to fully disclose the foregoing conflicts. While the Rose Law Firm did disclose the familial relationship between Hubbell and Seth Ward, his father-in-law, there was inadequate disclosure of the extent of the firm's representation of Ward. There is no indication that there was disclosure of the firm's representation in connection with the acquisition of the Castle Grande properties. While there may have been certain disclosures concerning Patricia Heritage, the claimed focus of them was on whether her being called as a witness would disqualify the firm as trial counsel, which was not an issue.

3. The Rose Law Firm was required but failed to disclose to RTC a potential conflict in its representation of Precision Industries while Precision's president was an individually named defendant in the *Frost* case.

4. Any conflict resulting only from Hubbell's familial relationship with Seth Ward was waived. We cannot conclude that there was any other waiver.

5. Discussion.

At the outset, the Rose Law Firm's Response to the Reports of the Inspector General attempts to separate the firm from its member Hubbell in a manner that implies that even if Hubbell had certain conflicts, they did not affect the firm. Thus, while acknowledging that Hubbell had business relationships with the Wards and P.O.M. Inc., the Response argues that "none of those

21 These conflicts may not have been appreciated at the time the Rose Law Firm initially undertook representation of FDIC in the *Frost* matter. However, under Model Rule 1.7, if a conflict arises after representation has been undertaken, the lawyer must withdraw unless the client consents after consultation. See Comment to Model Rule 1.7, IG Ex. I-1, at 522. Rose thus had a continuing obligation under the Model Rules to disclose and to seek a consent.

business relationships were known to Mr. Hubbell's partners at Rose.²² Under the Model Rules, in particular Rule 1.10(a), where lawyers are associated together as a firm, conflicts are viewed from the premise that the firm is essentially one lawyer for purposes of the rule governing loyalty to the client.²³ Hubbell was a member of the Rose Law Firm and knew fully his relationships. Hubbell was also the Rose Law Firm's lead attorney in the *Frost* case. If Hubbell was disqualified from representing RTC because of a relationship, the firm was likewise disqualified, whether or not the cause of disqualification was "known to Mr. Hubbell's partners at Rose."

In a similar vein, in arguing that the Rose Law Firm met its disclosure obligations, the Response implies that disclosure to the client was accomplished by disclosure of numerous items to Hubbell.²⁴ It was not.

Representation of the RTC in the *Frost* case was adverse to the interests of Ward. While Ward was not a party in the case, loans to Ward originally arising from the Castle Grande development and then partially rolled over were included among the transactions for which the RTC sought damages from Frost and were therefore material to the case. Those loans were on the *Frost* damage list because they were thought to have "jury appeal" as non-performing loans to an insider, i.e., they were improper loans that should not have been made.²⁵ Other litigation regarding those loans was pending between RTC and Ward.²⁶ While in 1988 a trial court had ruled in favor of Ward in that other litigation, that judgment never became final. The suit was not concluded until 1993. A finding in *Frost* that the loans to Ward were improper could have prejudiced Ward in the other litigation had there been a retrial. Such a finding could also have been embarrassing to Ward. Presumably, the Rose Law Firm did not want to cause embarrassment to its client Ward.

In addition, and more serious to the RTC, the RTC's position that loans to Ward would have "jury appeal" as improper loans was inconsistent with the interests of the Rose Law Firm, which had represented Ward and Madison Guaranty in the transaction that originally gave rise to the loans. Thus, the Rose Law Firm's own conduct in transactions involving Ward and Madison Guaranty that were potentially material to the *Frost* litigation was in question to the degree that the RTC's ability to have a fair trial could have been affected

22 Response at 15.

23 See IG Ex. I-1 (Model Rules of Professional Conduct), at 533.

24 See, e.g., Response at 2, 5 (regarding Precision), 68 (same).

25 See, e.g., IG Ex. III-68 (Statement of Richard Donovan), at 10-11.

26 See IG Ex. III-117 (Statement of Alston Jennings), at 1.

had that conduct been disclosed to the jury. The circumstances raise a serious question as to how the Rose Law Firm could have concluded that its representation of the RTC would not be materially limited by its prior representation of Ward and Madison Guaranty.

The Comment to Model Rule 1.7 points out that

Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) [of Model Rule 1.7] addresses such situations.

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. . . . If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.²⁷

The reports amply illustrate the adverse impact related to this conflict. The Rose Law Firm's Response to the Inspector General's Reports refers to a "firewall" intended to exclude Hubbell--lead attorney for the RTC in the case against Frost-- from participating in any discussion about Seth Ward's loans. There is no indication in the Inspector General's Reports of an actual "screen" around Hubbell in the sense that ethical "screens" are usually understood. Hubbell was not screened from Ward in any way.²⁸ However, the very creation of any sort of "firewall" or screen between Hubbell and discussion of the Ward loans only confirms the conflict or impairment of loyalty: The "firewall" would prevent Hubbell from participating in discussions and decisions material to the preparation and handling of the *Frost* case, in which he was lead attorney. Issues such as whether Ward's loans were to be included or excluded from the damage list were apparently to be decided without Hubbell's participation. While, in different circumstances, it could have been appropriate to screen Hubbell from any participation in the *Frost* case overall, because of his relationships with Ward, it is unthinkable to keep the lead attorney in a

27 IG Ex. I-1 (Model Rules of Professional Conduct), at 522-23.

28 The RTC's Sorenson, who prepared the damage list of loans for the *Frost* case, and the list of "related party" loans, was never told or made aware of the "firewall" as to Hubbell. Sorenson regarded Hubbell as the lead attorney in the case who developed the litigation strategy. See IG Ex. III-145 (Statement of Lee Sorenson), at 2-3.

contested litigation in the dark concerning issues material to the case, particularly without informing the client.

The employment of Patricia Heritage also created a conflict for the Rose Law Firm. The Rose Lawyers were concerned that Frost would try to show that the major cause of the losses was criminal activity by Madison Guaranty's management.²⁹ There was evidence from which it could be argued that Patricia Heritage while employed at Madison Guaranty had created minutes of Board meetings that never took place.³⁰ Heritage had been deposed in February 1991, shortly before the Frost case was settled, and was questioned about the preparation of the minutes.³¹ There was thus a risk that the Rose Law Firm's employment of Heritage could hurt the plaintiffs and undermine their counsel's credibility. There is no indication that this was discussed with the RTC.

The reports, which contain inconsistent and conflicting material in some respects, and which leave open many questions of degree and proximity, do not in our opinion indicate any other disabling conflicts within the meaning of the Model Rules. We do find failures to disclose.

6. Disclosure issues.

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation.³² The RTC/FDIC, however, have made it plain that they reserve the right to determine when a conflict may interfere with their representation by an outside counsel and therefore reserve "the right to decide whether an actual or potential conflict exists."³³ This reservation, and the law firm's agreement to it, imply a broader obligation to disclose circumstances that might be deemed a conflict than otherwise, and a broader disclosure requirement than the Model Rules suggest.

The Guide provides that in addition to conflicts covered by the Model Rules,

there are other actual or potential conflict situations peculiar to . . . representation of the FDIC of which we should be promptly

29 IG Ex. III-127 (Statement of Gary Speed), at 14.

30 IG Ex. III-54 (Excerpts from Borod & Huggins Report), at 137-40.

31 See IG Ex. III-68 (Statement of Richard Donovan), at 16.

32 See Comment to Model Rule 1.7, IG Ex. I-1, at 525.

33 FDIC, "Guide for Legal Representation," IG Ex. I-2, at 4.

informed. These include, but are not limited to, such matters as: . . . representation of an officer, director, debtor, creditor or stockholder of any failed or assisted bank in a matter relating to the FDIC, representation of a creditor whose claim competes with that of the FDIC, . . . and representation of a client in a matter adverse to the FDIC. Upon notification, we will inform you promptly whether we believe a conflict exists.³⁴

The reference to disclosure of both "representation of a creditor whose claim competes with that of the FDIC, . . . and representation of a client in a matter adverse to the FDIC" leaves no doubt that the RTC/FDIC expected to be consulted as to certain representations whether or not the particular representation was "in a matter adverse to the FDIC."

The RTC conflict regulations at 12 C.F.R. Part 1606, effective as of February 5, 1990,³⁵ likewise suggest a broad disclosure requirement: "organizational conflict," for example, is defined simply as "an interest or relationship which could adversely affect the contractor's ability to perform under the contract or to represent the RTC";³⁶ contractors are required to provide the RTC "with sufficient information to permit the RTC to make a determination with regard to organizational conflicts of interest."³⁷

Similarly, "A Law Firms' Guide: How to Be Considered for Retention by the FDIC and RTC," May 1990,³⁸ requires that outside counsel

must immediately notify the Corporation's Legal Divisions in writing of any actual or potential conflicts of interest as soon as they arise.

As the Comment to Model Rule 1.7 points out:

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the

34 FDIC, "Guide for Legal Representation," IG Ex. I-2, at 4.

35 IG Ex. I-3.

36 12 C.F.R. § 1606.2(j).

37 12 C.F.R. § 1606.6.

38 IG Ex. I-4.

lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.³⁹

Only by disclosure could RTC/FDIC exercise the rights they reserve to decide whether a particular relationship creates a conflict.

Under these standards, while there was not necessarily a conflict presented by the Rose Law Firm's representation of Precision Industries while representing the RTC in the *Frost* case (because Rose represented the corporation, not its president⁴⁰), there was a potential conflict because James Alford, an individually named defendant in the *Frost* case, was president of Precision at the time. The Rose Law Firm was in a position to pull its punches against Frost, or at least against Alford, so as not to offend the president of another current client. The Rose Law Firm lawyers apparently recognized this situation as a potential conflict, and agree "in hindsight" that it might have been preferable to disclose it to RTC.⁴¹ There is no indication that it was disclosed.⁴²

B. Possible damages.

The second issue is whether, assuming there was an impermissible conflict, this conflict resulted in damages to the RTC. This has been assessed by reviewing selected portions of the record of the *Frost* case to see whether, insofar as one can tell in hindsight and at a distance, the case was settled on appropriate terms, and whether the case's value seems to have been materially decreased by the conflicts.

It is not easy to second-guess strategic decisions made in litigation or settlement negotiations. Trial counsel who lived with a case and who saw all the witnesses know far more about it than others ever can by reading a cold record years later. Nevertheless, trial and appellate lawyers often are called upon to assess the value of a case tried by someone else, so with these caveats we proceed here to assess the value of the *Frost* case based on a selective review of limited portions of the record.

39 IG Ex. I-1, at 524.

40 See Model Rule 1.13.

41 IG Ex. III-68, at 17-18.

42 *Id.* It is impossible to say whether the Rose Law Firm did "pull its punches" against Alford. Richard Donovan's statement (*id.* at 18) and the Rose Law Firm's response to the Inspector General's Reports say they did not.

1. Negligence.

For purposes of attempting to assess the strengths and weaknesses of the RTC's case against Frost & Company, we reviewed parts or all of the following depositions taken in the *Frost* case: Michael Jones, James Alford, Kelli Alford, James Cullen, Jeffrey Freuchting, Dorsey W. Jackson, Michael Jones, Art Kellam, James Timothy McBrayer, James P. Neumeier, Stanley Smith, William Daniel Thomas, Jr., William L. Blackwell, Roland Brock, Bonnie Crocheron, Stephen K. Cuffman, Harry Don Denton, Patricia Heritage, Sarah Hawkins, M. G. "Chip" Kieseewetter, John Latham, Jack C. Owen, Charles Peacock III, Charles Peacock IV, John Selig, Lee Sorenson, Barbara Spears, James Smith and Gregory T. Young. As appropriate, we also reviewed the exhibits and materials related to those depositions. We also reviewed a January 19, 1988-89 accountants' professional liability policy (claims made) issued to Frost, the first amended complaint and the answer to the first amended complaint.

It appears from the transcripts that counsel on all sides were competent and adequately aggressive in pursuing the interests of their respective clients. In particular, the Rose Law Firm did not appear to be less than aggressive, and it was reasonably effective in pursuing legal theories and asserting the interests of the RTC.

The transcripts are consistent with a strong case for negligence against the Frost firm. Percipient witnesses from the Frost firm made damaging statements and admissions. The expert witnesses retained by the Frost firm were of limited effectiveness in asserting defenses and addressing problems raised by the plaintiff. Frost's principal accounting expert (Jones), however, was tenacious and reasonably effective in his testimony, particularly with respect to raising triable questions about the adequacy of the review and the conclusions of KPMG Peat Marwick as successor auditors of Madison Guaranty. In addition, the last day of deposition of the plaintiff's expert (Blackwell) did much to undermine his previous testimony.

The testimony as a whole establishes quite well that the audits conducted by the Frost firm with respect to the 1984 and 1985 calendar years of Madison Guaranty were seriously flawed. The testimony showed that Frost auditors were insufficiently skeptical of information received from management, failed to check adequately the values of many loans on the books of Madison Guaranty (the failures concerned, inter alia, the adequacy of loan loss reserves, the adequacy of documentation, the validity of appraisals, the value of delinquent loans, and the appropriateness of security and documentation of related party loans), failed to follow many of Frost's own internal procedures with respect to audits, failed to respond in an appropriate professional fashion with respect to information from federal regulators and the prior auditor of Madison Guaranty (the Deloitte firm), utilized many audit personnel who were

poorly qualified with respect to financial institutions and offered seriously inadequate explanations of why observed problems and deficiencies were not carried into management letters.

In contrast, the testimony of witnesses with the successor auditor of Madison Guaranty, KPMG Peat Marwick, was strong and effective in establishing that the Frost firm committed numerous errors. The partner in charge of the Peat Marwick audit for 1985 and 1986 (Jackson) testified particularly strongly that in his opinion the Frost firm had repeatedly committed substantial errors. The cross-examination of such witnesses for Peat Marwick was not effective.

Accounting liability cases are not easy to present to a jury. The subject matter is dry and technical. The applicable auditing standards are vague and elastic. The auditor's client often must share some of the blame. Nevertheless, on this record there would appear, overall, to be a high likelihood that the negligence of the Frost firm could have been established, in substantial part based upon the testimony of its own witnesses.

2. Causation.

Proof of negligence is of no use to a plaintiff unless it can be proved that the negligence caused damages. Thus, causation is the next essential element of an accounting malpractice case, and often a difficult element to prove. It is apparent from the transcripts reviewed that there were substantial problems with causation issues in the *Frost* case.

The principal problem is that the federal regulators put Madison Guaranty on notice of its noncompliance with federal regulations for the year ending December 31, 1983, and bank management was notified of that in writing by no later than June 1, 1984. Based upon testimony about that notification, it is apparent that the information conveyed was strongly critical of Madison Guaranty's internal auditing and controls, and raised a number of issues and problems, establishing strong inferences that the Frost firm had failed to discharge properly its professional obligations to Madison Guaranty.

It appears that Frost may not have seen or been aware of the FHLBB communications to Madison Guaranty, although it is unclear why that was so. Frost should have sought out and reviewed Madison Guaranty's communications with its regulators. In any event, Frost's 1984 and 1985 audits did not consider the regulators' criticisms, which had been conveyed to Madison Guaranty's management and directors in mid-1984.

The Frost firm argued that the FHLBB notice of Madison Guaranty's deficiencies meant little because (to paraphrase the argument) the federal regulators were finding problems at every savings and loan, the regulations

were too strict for any S&L to comply with, the real problem was the general failure in the real estate market and (more generally) the problems identified were not as substantial as the federal regulators had advised. In the context of the litigation against it, the Frost firm obviously did not have an interest in arguing forcefully that Madison Guaranty's board and the federal regulators were already on notice of serious problems, but that would almost certainly be an argument raised now by the Rose Law Firm.⁴³

Another causation issue that made less likely a successful claim against the Frost firm arose out of the very substantial ownership and managerial control exercised by McDougal. It is apparent from the transcripts that McDougal's control and management of Madison Guaranty caused many of the problems from which Madison Guaranty suffered between 1984 and 1986. Testimony from relatively senior officers (e.g., Denton) suggested that McDougal ran all aspects of Madison Guaranty despite his lack of a formal position, directed the use of unqualified appraisers, funded loans without appraisals and would have ignored anything critical of management that Frost might have said--at least so long as he could hire replacement auditors.

Other testimony suggested that Frost (and undoubtedly others) deferred to McDougal in many respects because of his ownership and management positions. As one of the Frost accountants testified, it was very unusual to have the owners of an S&L also actively managing it, and that led to a lower degree of oversight by the Frost firm of certain aspects of the Madison Guaranty operation.

Testimony shows that the Board of Directors of Madison Guaranty was not strong and deferred to McDougal to a large extent until McDougal's removal from the institution in July 1986. The depositions taken of Madison Guaranty's Board of Directors did not help the RTC. With perhaps one exception, the directors said nothing that suggested, let alone convincingly proved, that they would have acted differently had Frost's audits raised the issues that should have been raised. In that context, the Frost firm could argue that, even if it had raised more substantial issues with the management of Madison Guaranty, no action would have been taken because the issues raised would have implicated McDougal's control of Madison Guaranty.

Another problem with establishing causation is in the defense raised by Frost that the problems of Madison Guaranty were both common to the industry

43 A related argument is that the regulators would not have taken over Madison Guaranty any more quickly had they known of its insolvency earlier. Supporting this argument is the fact that the regulators did not take over Madison Guaranty quickly once KPMG Peat Marwick determined that it was insolvent (that occurred in May 1987; the takeover occurred in February 1989). Opposing this argument is the fact that the regulators clamped down on Madison Guaranty's risky activities long before they took it over.

and caused by extraneous forces. While the defense is relatively weak in the circumstances, it nonetheless might have had a substantial impact upon a jury in Arkansas during the period in which the case would have been tried. In essence, it was Frost's argument (principally through an expert witness) that the general rise in interest rates led to relaxation of federal regulations limiting investments by savings and loan associations, inducing S&Ls to engage in riskier investments, while at the same time the regulators were both understaffed and more willing to enforce remaining regulations in a lax manner. The Frost firm also argued that the real estate industry in Arkansas generally collapsed in the 1984-1986 period, leading to many of the problems of Madison Guaranty. These defenses might strike a responsive chord among a jury in Arkansas, many of whom might have experienced similar problems during that period as a result of declining real estate prices, bank and savings and loan failures and related economic problems. These defenses raised the risk that a claim could not have been established successfully against the Frost firm.

On balance, it appears that establishing causation on the claims against the Frost firm would have been difficult, notwithstanding the relatively clear case of negligence. Of greatest import are the FHLBB notice to management of the deficiencies it found with respect to the 1983 financial statements and the evidence that McDougal so dominated the affairs of Madison Guaranty that even if Frost had done an adequate job, its advice and recommendations would not have been carried out by Madison Guaranty's Board of Directors and management.

3. Damages.

Assuming that Frost's negligence can be established, and assuming that causation can be demonstrated, there remains the question whether substantial damages could be proved, and whether any recovery in a substantially greater amount than was achieved (\$1.025 million) was reasonably likely had somebody lacking the Rose Law Firm's conflicts handled the matter.

The apparently applicable accountants liability insurance policy carried a \$50,000 deductible and a \$3 million per claim limit. The settlement with the Frost firm was achieved by a payment of \$1.025 million. It is our understanding that the Frost firm paid the \$50,000 deductible and that the carrier paid the rest.

It is not entirely clear exactly how much the RTC would have prayed for at trial. The draft trial exhibits we have reviewed suggests that a realistic

maximum would have been approximately \$7 million, much of which was subject to question,⁴⁴ and certainly could not have exceeded \$10 million.⁴⁵

Regardless of whether the amount prayed for was to be \$7 million or \$10 million, the primary source of recovery was to be the \$3 million insurance policy.⁴⁶ There was no expectation either on the part of the Rose Law Firm or the RTC that the Frost firm or its partners had substantial assets, or could make a substantial contribution toward a settlement, nor is it customary in accounting malpractice cases for the RTC to focus on individual ability to pay when insurance coverage is available.⁴⁷

Thus, the RTC and the Rose Law Firm both assumed that the most the RTC could recover was approximately \$3 million, regardless of the size of any judgment that might be awarded. For purposes of valuing the case, therefore, the figure of \$3 million can be used as the upper limit of any possible recovery.

4. Litigation risk analysis.

The foregoing means that the RTC faced serious problems at trial, particularly with the issue of causation, and even if it won, it probably could not have recovered more than \$3 million. Taking into account all the risks, it is apparent that the expected recovery would not have been more than roughly one-third of the \$3 million, or approximately \$1 million. A strong case could be made that the expected recovery was significantly less than \$1 million.⁴⁸

44 The expert CPA who testified for Frost stated that in his view a substantial portion of what Peat Marwick determined was the shortfall in loan loss reserves at year-end 1985 was improperly calculated under GAAP principles, and under RAP principles there would have been a substantially smaller loan loss reserve required of Madison Guaranty at year-end 1985. While we are not in a position to express an opinion as to which set of figures would be most likely to be accepted by a jury and a court, there is at least a substantial risk that much of the deficit found by the Peat Marwick analysis would be eliminated under RAP principles if the expert for Frost were believed.

45 An RTC witness, Lee Sorenson, calculated principal damages of \$5.7 million and total damages (including prejudgment interest) of \$10.3 million. Ex. 4 to Sorenson Deposition. It is not clear whether these were the numbers that were to be used at trial. Of Sorenson's \$10.3 million, \$222,395 represented losses attributed to several loans made to Seth Ward. *Id.*

46 Hubbell interview, Dec. 27, 1995, at 29-30; Breslaw interview, Dec. 21, 1995, at 1-2.

47 *Id.*

48 By "expected recovery," we mean the expected value of the case, calculated in the ordinary fashion.

Given this assessment, the settlement of \$1.025 million that was achieved appears to be well within the reasonable range for the case even if the RTC had been represented by comparable counsel without conflicts.

C. Potential for cost-effective litigation against the Rose Law Firm.

The ultimate issue is whether, on this record, the RTC should assert claims against the Rose Law Firm. In analyzing this issue, one must start with the applicable legal standard governing RTC litigation.

Congress established the RTC "to contain, manage, and resolve failed savings associations."⁴⁹ Congress gave the RTC the statutory duty of "maximiz[ing] the net present value return from the sale or other disposition of institutions . . . or the assets of such institutions . . . [and] minimiz[ing] the amount of any loss realized in the resolution of cases"⁵⁰ The RTC fulfills this responsibility in part by bringing civil actions in appropriate cases to recover damages.⁵¹ Such cases are brought, however, only if there is reason to believe that the litigation will add to the value of the thrift's estate and thus minimize the losses caused by its failure. If there is no reason to believe that litigation will result in a net recovery, then there is no statutory basis to file a case.

This statutory mandate requires the determination of whether any claim that might be asserted against the Rose Law Firm can be litigated in a cost-effective manner. Put another way, the issue is whether claims can be stated that have an expected value greater than the expected cost of litigating them.

Applying this standard, it is recommended that no such claims be asserted. The reasons for this recommendation are as follows:

Liability: For the reasons stated in part IV.A above, a claim could be asserted that the Rose Law Firm had an impermissible conflict of interest in the *Frost* case, which it did not adequately disclose or have waived. An ethical violation, however, does not always translate into a tort. The rules of professional conduct are written as disciplinary rules. While the rules may inform a court as to the appropriate standard of care for certain purposes, a violation of the rules does not necessarily mean the commission of a tort for which damages may be awarded.

49 FIRREA § 107.

50 12 U.S.C. § 1441a(b)(3)(C), as amended by FIRREA § 501.

51 12 U.S.C. §§ 1821(d)(2), (k), (l), as amended by FIRREA § 212.

Convincing a jury that a tort was committed may not be easy. The applicable rules are complex and the subject matter is dull. Also, the Rose Law Firm might receive support from several quarters, including their opponents in the *Frost* case. In all probability, counsel for Frost & Company in the *Frost* litigation would testify that they did not see any conflict and do not think that the Rose Law Firm did the wrong thing.⁵² If so, the RTC would be up against not just the opinion of one of Little Rock's leading firms, but the opinion of several such firms, and the lawyers for Frost & Company would likely be viewed as people without any axe to grind.

In addition, an Arkansas jury, in a close case, might well prefer the home-town defendant to the federal-government plaintiff even assuming that the jury agreed there was a conflict. A jury might well be reluctant to charge the current members of the Rose Law Firm for the ethical misdeeds of a former partner who currently resides in a federal prison.

Damages: There are two possible theories of damages. The first is that the case would have resulted in an outcome more favorable for the RTC but for the conflict. The second is that, regardless of the outcome, the fees paid by the RTC after the conflict arose should be returned.⁵³

The unfavorable result theory: To recover under this theory, "[m]ere wistful speculation . . . is insufficient. [The client] must *prove* that, had [the law firm] disclosed the alleged conflict, [the client] would have received a more favorable result."⁵⁴ For the reasons stated in part IV.B above, the *Frost* case seems to have been settled on reasonable terms. In any event, proving otherwise would be difficult and might look like so much Monday-morning quarterbacking.

The fee refund theory: Some cases hold that a conflict of interest, if not disclosed and waived, entitles the client to recoup all legal fees paid even if the client is otherwise undamaged. That theory, if available,⁵⁵ ordinarily takes

52 IG Ex. III-159, III-160.

53 Both theories were advanced in *Blecher & Collins, P.C. v. Northwest Airlines, Inc.*, 858 F. Supp. 1442, 1457 (C.D. Cal. 1994).

54 *Id.* (emphasis in original).

55 Some courts reject the notion that the lawyer's breach of fiduciary duty automatically means "that he must forfeit fees for services he had already performed or would thereafter perform. Under New York law, attorneys may be entitled to recover for their services, even if they have breached their fiduciary obligations." *Mar Oil, S.A. v. Morrissey*, 982 F.2d 830, 840 (2d Cir. 1993).

effect only after the conflict becomes apparent: "[the law firm] must refund (at most) only the fees it received *after* the actual conflict arose."⁵⁶

In this case, it seems likely that the conflicts did not become apparent until some time after the Rose Law Firm lawyers became familiar with the issues and strategies to be used in the *Frost* case. Thus, even if this fee refund theory were applicable, it could at best be used to seek only a portion of the fees paid to the Rose Law Firm. It is our understanding that the total fees paid to the Rose Law Firm for this engagement were approximately \$200,000. We do not think that the RTC could reasonably seek to recover fees from other engagements of the Rose Law Firm by the RTC on matters unrelated to Madison Guaranty.

Litigation costs: A case against the Rose Law Firm based on the foregoing could not be litigated to judgment in a cost-effective manner. Preparing and trying such a case would involve many depositions (both of Rose Law Firm lawyers and others), heavy use by both sides of expensive experts and probably a fair amount of motion practice. There is no reasonable likelihood that such a case could be prepared and tried for \$200,000. Thus, in all probability, the expense of litigating the matter would exceed the maximum recovery. Regardless of whether it won or lost at trial, the RTC would lose money on the case.

V. RECOMMENDATION.

While a claim could be stated against the Rose Law Firm, litigation would be difficult, the outcome would be uncertain and the expected recovery would not cover the costs of the litigation, much less lead to a net recovery for Madison Guaranty's estate. Thus, it is recommended that such litigation not be pursued.

56 *Blecher & Collins, P.C. v. Northwest Airlines, Inc.*, 858 F. Supp. at 1457 (emphasis in original). But see *In re Eastern Sugar Antitrust Litigation*, 697 F.2d 524, 533-34 (3d Cir. 1982) (recognizing the court's power to forfeit fees earned before the conflict arose, but rejecting that remedy except in cases where "the breach of professional ethics is so egregious that the need for attorney discipline and deterrence of future improprieties of that type outweighs [the fact that such an award would provide the client with a windfall and deprive the attorney of fees earned while acting ethically] . . ."; in that case, the remedy was rejected despite the lawyers' failure to disclose that plaintiffs' counsel began merger discussions with counsel for one of the defendants after approval of a settlement agreement but before resolution of attorneys' fees awards).

1466

WILLIAM E. CONNOLLY
100 EAST FOURTH STREET
LITTLE ROCK, AR 72201

WASHINGTON, D. C. 20005

2021-11-2000

100 EAST FOURTH STREET

November 20, 1993

BY REGISTERED MAIL

Jerry C. Jones, Esquire
Rose Law Firm
100 East Fourth Street
Little Rock, AR 72201

Dear Jerry:

It was good to talk to you today. I am enclosing herewith three file folders, labeled: A3530.1 MADISON GUARANTY LTD. FINISH Application Brokerage Activities; A3530.1 Madison Guaranty - Newborn - (1993) Preferred Stock Offering; and A3530.1 MADISON GUARANTY Preferred Stock Offering Corporate which were among the late Vincent Foster's files. They appear to me to be files of Rose Law Firm documents. I thought it most appropriate to transmit them to you, for retention and storage.

I would be grateful if you would confirm for me the receipt of these files.

Best wishes for a good Thanksgiving!

Sincerely,

David E. Randall

Enclosures

DEK/bb

RS 000381

88242 MADISON GUARANTY SAVINGS/LOAN
14TH AND MAIN STREETS
LITTLE ROCK, AR 72202

MR. JOHN LATHAM, PRESIDENT
16TH AND MAIN
LITTLE ROCK, AR 72201

1-P.C.

ATTY	DATE	TIME	MATTER	VALUE
ROY	10/18/85	3.50		242.50
MFC	12/04/85	.50		42.50
MFC	12/04/85	.50		37.50
MFC	12/10/85	.50		42.50
MFC	12/11/85	.50		42.50
MFC	12/16/85	1.00		125.00
MFC	12/23/85	1.00		125.00
MFC	12/24/85	1.00		125.00
MFC	12/30/85	.50		37.50
RTD	12/31/85	1.00		75.00
RTD	01/02/86	3.00		225.00
RTD	01/03/86	1.00		75.00
MFC	01/02/86	1.00		75.00
RTD	01/16/86	.50		16.75
MFC	01/16/86	1.00		125.00
RTD	01/16/86	.50		37.50
RTD	01/15/86	.50		37.50
FEES TOTAL				17.05
				1443.75

ATTY	DATE	CHECK	DISB AMT
RTD	12/24/85	57791	2.35
SUMMARIZED CODE		5	1.20
DISB TOTAL			3.55

DESCRIPTION OF DISBURSEMENT
ONE COUNTY MAP
PHOTOCOPY EXPENSE (.15)

TIME SUMMARY BY ATTORNEY

ATTORNEY	TIME	STANDARD VALUE	MATTER	AMOUNT	DISB
31-JAN	7.50	912.50	912.50	2731.25	125.00
30-RTD	6.25	448.75	448.75	1168.75	75.00
64-RTD	3.50	262.50	262.50	762.50	75.00
9908-JAN	.00				

DESCRIPTION OF SERVICES RENDERED

RESEARCH ON WHAT APPROVALS, PERMITS, ETC., ARE NECESSARY TO OPERATE SEWER AND WATER FACILITIES; MULTIPLE TELEPHONE CONFERENCES WITH STATE AGENCIES; MEMO TO U. HURRELL

CONFERENCE WITH R. MASSEY 7464

TELEPHONE CONFERENCE WITH S. VARD; P. DOVER 11316

TELEPHONE CONFERENCE WITH S. VARD; TELEPHONE CONFERENCE WITH D. DOVER 11418

TELEPHONE CONFERENCE WITH S. VARD 12398

TELEPHONE CONFERENCE WITH S. VARD 2248

TELEPHONE CONFERENCE WITH S. VARD; SEARCH FOR MAP 2242

TELEPHONE CONFERENCE WITH U. AND FROM S. VARD'S OFFICE 2194

TELEPHONE CONFERENCE WITH S. VARD 7452

RESEARCHED COUNTY COURT LOCAL OPTION ELECTION RECORDS 13352

CONFERENCE WITH R. MASSEY 7458

COMPLETED RESEARCH ON "VET/DRT" ISSUE; DRAFTED MEMO

WENT BACK TO COUNTY CLERK TO CHECK FOR ORDER OF COURT REGARDING TOWNSHIP DELETION; REVISED MEMO 13358

CONFERENCE WITH S. VARD; CONFERENCE WITH KEN SHERIN 11460

MEETING WITH M. CLINTON REGARDING ELECTION WITH R. BODOVAN 52

TELEPHONE CONFERENCE WITH S. VARD; CONFERENCE WITH R. BODOVAN 15030

TELEPHONE CONFERENCE WITH ELECTION COMMISSION AND COUNTY CLERK REGARDING WHAT HAPPENED TO OLD UNION TOWNSHIP 46

DKSN029011

September 1993	October 1993	November 1993
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Week Ending
August

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Continued

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C- pls review -
discuss -/me

MEMORANDUM

TO: (Mrs Clinton)
 FROM: Mary Russell
 DATE: July 21, 1958

Please review the attached list of your closed files. We are now in the process of microfilming and destroying all files unless you specifically request certain files remain intact. All files that are to be kept in their original form need to be marked with "X." There are many files that could be destroyed without being microfilmed. This would save time and money. Please sign "X" beside each of these files.

If you have any questions, please call me. We need your list back no later than August 9.

Also -
 I would like
 organized an
 updated
 typed list
 of all these
 files & the
 person they
 kept in
 - I want list
 of all matters
 went to desk 40

C- I have marked with D, K + M (for Mary L.)
 + marked some files I can't find
 + returned to me.

There are, however, so many
 duplicate listings I can't
 tell what's being described.

Can you review list before
 next week - mark duplicate
 duplicates & note any file I
 kept off marking. Then discuss it.

(D)✓

(D)✓

(K)✓

(D)✓

PRIVILEGED NON-MADISON GUARANTY CLIENT INFORMATION
REDACTED

D✓

D✓

(K)✓

48754 1. J. Madison Guaranty 2+3 : 12/1/55
2 : 12/1/55
3 : I.D.C.
" : (Matters 1, 2, 3+4) 9/15/55

(D)✓

PRIVILEGED
NON-MADISON GUARANTY
CLIENT INFORMATION
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INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, FEBRUARY 8, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:00 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Let me say, for purposes of the witnesses and those who are assembled and those who are waiting, that the Ranking Member and I have been meeting with our Counsels in an attempt to try to expedite some of the hearings, and to resolve some of the technical difficulties that we might encounter, to be quite candid with you. So that is what has delayed the process and we believe we can start any moment.

[Whereupon, Jane C. Sherburne, Special Counsel to the President, and David E. Kendall, Attorney, Williams & Connolly; were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Mr. Kendall, Ms. Sherburne, we thank you for your cooperation in appearing here today, and as in the past, if there is any statement that you would like to make to the Committee, we would be happy to receive it.

Mr. Kendall.

SWORN TESTIMONY OF DAVID E. KENDALL ATTORNEY, WILLIAMS & CONNOLLY

Mr. KENDALL. I have none, Mr. Chairman.

SWORN TESTIMONY OF JANE C. SHERBURNE SPECIAL COUNSEL TO THE PRESIDENT

The CHAIRMAN. Ms. Sherburne.

Ms. SHERBURNE. I have no statement, either, Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

I'm about to have put before you, a set of billing records which I just want you to have because we're going to be referring to them.

I want to ask you, Mr. Kendall, whether these are billing records which you produced to the Senate Whitewater Committee on Friday, January 5, 1996. I don't need you to go through every one. I won't hold you to every one, but do these look like some of the records you produced?

Mr. KENDALL. These appear to be those records, Mr. Chertoff.

Mr. CHERTOFF. Mr. Kendall, when is the first time you saw those records?

Mr. KENDALL. I first saw the entire group of them at approximately 12:45 p.m. on Thursday, January 4, 1996.

Mr. CHERTOFF. How did you come to see them?

Mr. KENDALL. Well, I had received a message from Ms. Huber to please stop by her office before I left the White House that day, and I stopped by her East Wing office and she handed me a sheaf of documents.

Mr. CHERTOFF. Now was the sheaf of documents billing records and computer printouts which were Xeroxes but which had original handwriting in red on them?

Mr. KENDALL. That's correct.

Mr. CHERTOFF. Ms. Sherburne, when is the first time you saw those billing records?

Ms. SHERBURNE. I saw those billing records for the first time on January 4th when I went to the East Wing office with Mr. Kendall and Carolyn Huber's lawyer, Mr. Schuelke, and I believe it must have been around 5:00 p.m.

Mr. CHERTOFF. How did you come to go to that meeting at around 5:00 p.m.?

Ms. SHERBURNE. Mr. Kendall called me, I think, about an hour before that and told me that Carolyn had identified some records he thought we ought to take a look at immediately, that he and Mr. Schuelke would like to come over to the White House and go over to the East Wing with me so we could all take a look at them.

Mr. CHERTOFF. At this meeting around 5 p.m. you were there, Ms. Sherburne, Mr. Kendall, Ms. Huber, and Mr. Schuelke?

Ms. SHERBURNE. That's right.

Mr. CHERTOFF. Anybody else?

Ms. SHERBURNE. There may have been other people around, but no one participating in what we were there to do.

Mr. CHERTOFF. Mr. Schuelke was and is Ms. Huber's personal attorney?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. Mr. Kendall, I want to just go back and ascertain from you the universe of requests for documents that you were considering in dealing with these records. Am I correct that in December 1993, there was a subpoena from the Department of Justice that was received to which these documents were responsive?

Mr. KENDALL. Yes, that was a subpoena addressed to me. I received it on December 24, 1993. I remember the date distinctly.

Mr. CHERTOFF. It was a subpoena that—was it addressed to you, or was it in care of you, but actually addressed to the President and Mrs. Clinton?

Mr. KENDALL. No, it was addressed to me.

Mr. CHERTOFF. And did you understand that the subpoena was directed at documents in the personal custody and control of the President and Mrs. Clinton?

Mr. KENDALL. No, I did not.

Mr. CHERTOFF. You believed they were simply addressed to documents in your custody and control?

Mr. KENDALL. Yes, I did.

Mr. CHERTOFF. Did you understand that you had an obligation to convey to the President and Mrs. Clinton the substance of that subpoena?

Mr. KENDALL. Yes, I did.

Mr. CHERTOFF. Did you do so?

Mr. KENDALL. I did.

Mr. CHERTOFF. Did you receive a second subpoena from the RTC at some point calling for, among other things, billing records?

Mr. KENDALL. Yes, I did.

Mr. CHERTOFF. When was that?

Mr. KENDALL. I received document requests from both the RTC and the Independent Counsel. I received a document request in, I think, March 1994, followed by a subpoena that would have called for these records. And, likewise, I received further requests from the Independent Counsel in May 1994, addressed to the President and Mrs. Clinton.

Mr. CHERTOFF. OK. So the May 1994 subpoena was specifically addressed to the President and Mrs. Clinton?

Mr. KENDALL. That's correct.

Mr. CHERTOFF. When was the RTC request?

Mr. KENDALL. The RTC request was in March. As I recall, it was followed up by a subpoena in June, but the subpoena called for the same things that the request did.

Mr. CHERTOFF. So the subpoena simply took the request and embodied it in a subpoena?

Mr. KENDALL. That's correct.

Mr. CHERTOFF. Was that RTC subpoena directed at the President and Mrs. Clinton?

Mr. KENDALL. It was.

Mr. CHERTOFF. Now with respect to the requests and the subpoenas in 1994 about which you've just testified, did you understand you had an obligation to communicate the substance of those orders or subpoenas to the Clintons?

Mr. KENDALL. I did.

Mr. CHERTOFF. Did you do so?

Mr. KENDALL. I did.

Mr. CHERTOFF. Ms. Sherburne, did you get—

Mr. KENDALL. Excuse me, Mr. Chertoff. There was one other. I don't know if you wanted all of the requests.

Mr. CHERTOFF. OK, yes.

Mr. KENDALL. Also in, I think, March 1994, I received a request from the FDIC which quite specifically asked for billing records, and that was, as I say, in March or April of 1994.

Mr. CHERTOFF. Was that in connection with an investigation concerning the Rose Law Firm and possible conflicts of interest?

Mr. KENDALL. Well, I don't know what the investigation was in connection with entirely. It did look to conflicts of interest, but it

was focusing on Mrs. Clinton's work for the FSLIC on behalf of an Illinois savings and loan. She had billed 2 hours to the case.

Mr. CHERTOFF. Was that FDIC request followed by a subpoena?

Mr. KENDALL. No, it was not.

Mr. CHERTOFF. Did you communicate the substance of that request to the Clintons?

Mr. KENDALL. Yes, I did.

Mr. CHERTOFF. Now, we're still in 1994, Ms. Sherburne. Did you receive the same requests and subpoenas in 1994 about which Mr. Kendall has testified?

Ms. SHERBURNE. No, Mr. Chertoff.

Mr. CHERTOFF. Did you receive any subpoenas or requests in 1994 to which these billing records were arguably responsive?

Ms. SHERBURNE. There was one subpoena in May 1994, from the Independent Counsel that called for records that had been authored by Mr. Foster, and because these records have Mr. Foster's handwriting on them, I believe they would have been responsive to that request.

Mr. CHERTOFF. What did you understand was the scope of your obligation to search for these records?

Ms. SHERBURNE. In May 1994, I personally was uninvolved in the search except peripherally. The search was conducted primarily under the direction of Joel Klein, who was then Deputy Counsel to the President. Mr. Klein sent a request to the entire White House, as I recall, and asked for such records to be located, identified, and delivered to the Counsel's Office.

Mr. CHERTOFF. When you say he disseminated it around the White House, did he disseminate the actual subpoena, or did he prepare a memorandum that explained what was required?

Ms. SHERBURNE. I am not certain of that since I was not directly involved, but I believe that he circulated a request and he may have attached the exact language from—no, no. As a matter of fact, he couldn't have because the subpoena was much broader, it was narrowed by agreement with the Independent Counsel, so the language that was actually sent around was not the precise language of the subpoena, so he couldn't have done that.

Mr. CHERTOFF. And it was sent all over the White House?

Ms. SHERBURNE. That's my understanding, yes.

Mr. CHERTOFF. Finally, I want to just turn to our own requests and subpoenas, meaning the Senate's. In 1995, Mr. Kendall, did you receive first a document request from the Senate, and then later, a subpoena that was issued by this Committee?

Mr. KENDALL. I first received a document request, and then I received three subpoenas on Halloween 1995.

Mr. CHERTOFF. Did you understand that you had an obligation to convey those requests and those subpoenas, the substance of them, to the Clintons?

Mr. KENDALL. I did.

Mr. CHERTOFF. Did you do so?

Mr. KENDALL. I did.

Mr. CHERTOFF. Ms. Sherburne, did you receive requests and subpoenas from this Committee?

Ms. SHERBURNE. Yes, many.

Mr. CHERTOFF. Did you understand that you had an obligation to respond to those, certainly with respect to the subpoenas, in the White House?

Ms. SHERBURNE. Absolutely.

Mr. CHERTOFF. Did you circulate the substance of what was required under those subpoenas around the White House?

Ms. SHERBURNE. Yes.

Mr. CHERTOFF. Now since we are on the issue of document requests, I have to indicate to you, Ms. Sherburne, that late yesterday we received at the Committee a package of documents with a cover letter signed by you dated February 7, 1996, indicating that these were documents responsive to the Committee's subpoena on October 31, that had been in the possession of Mr. Gearan whose staff had "inadvertently packed them with material Mr. Gearan took with him to the Peace Corps." And you are familiar with these documents?

Ms. SHERBURNE. Yes, I am.

Mr. CHERTOFF. When did you first receive them?

Ms. SHERBURNE. I believe sometime last week.

Mr. CHERTOFF. When was that, last week?

Ms. SHERBURNE. I'm not sure. I don't have—we received them by cover of a transmittal letter from Mr. Gearan's attorney, and I'm not sure of the date of the letter.

Mr. CHERTOFF. Did you review them?

The CHAIRMAN. Would you provide us with that information, Ms. Sherburne?

Ms. SHERBURNE. Sure, be happy to.

The CHAIRMAN. So you will, like this afternoon, check back with the office and see if you can't tell us when you actually got the transmittal letter and the documents from Mr. Gearan.

Ms. SHERBURNE. I'd be happy to.

The CHAIRMAN. Thank you.

Mr. CHERTOFF. Did you review them?

Ms. SHERBURNE. Did I personally review them?

Mr. CHERTOFF. Yes.

Ms. SHERBURNE. I personally reviewed the documents that we produced. I did not personally review whatever documents were contained in the box of material that was sent.

Mr. CHERTOFF. Now there were documents that were produced that were redacted. Who did the redactions?

Ms. SHERBURNE. I reviewed the documents that were redacted in complete form, and others on my staff did; and the redactions were reviewed with Counsel to the President, Jack Quinn.

Mr. CHERTOFF. I just want to put up one of these because I am frankly baffled. It's a part of a legal pad, S20431 through 20433, 3 pages of the package. Do you know whose handwriting this is?

Ms. SHERBURNE. What was the number?

Mr. CHERTOFF. S20431 through 20433.

Ms. SHERBURNE. I believe this is Mr. Gearan's handwriting.

Mr. CHERTOFF. It's headed, "Whitewater" and dated 1/7/94. Then there's a redaction until we get to item 4 and item 5, and item 5 by the way indicates—do you know who PB is?

Ms. SHERBURNE. No, I don't.

Mr. CHERTOFF. Could it be Paul Begala?

Ms. SHERBURNE. Those are his initials. But I don't know if that's what this refers to.

Mr. CHERTOFF. It talks about, "PB, BL, Waldman to Arkansas to meet with Beverly Bassett. Try to poke holes in their story." Do you know who Mr. Waldman is?

Ms. SHERBURNE. Yes, I do.

Mr. CHERTOFF. Who is Mr. Waldman?

Ms. SHERBURNE. Michael Waldman is a White House employee who works in the communications department.

Mr. CHERTOFF. Under Mr. Gearan?

Ms. SHERBURNE. At that time, I believe so.

Mr. CHERTOFF. By the way, and to put this in context, I guess, in December 1993, we had that editorial with the President's handwriting next to it regarding Beverly Bassett. Can you remind us, Ms. Sherburne, when did Mr. Fiske get appointed by Ms. Reno?

Ms. SHERBURNE. Mr. Fiske was appointed in January, maybe the 12th or sometime in the middle of January, the 20th.

Mr. CHERTOFF. Did you redact the material down to item No. 4?

Ms. SHERBURNE. I didn't personally, but I reviewed the redaction. I should tell you, Mr. Chertoff, that as has been our practice, if you would like to review the unredacted set to determine and verify our redactions, we're more than happy to sit down with you and show it to you.

The CHAIRMAN. That's very good. I thank you for that.

Mr. CHERTOFF. I would like to go to the next page, to S20432. Again, the redactions on this page are redactions which, I guess, Mr. Quinn made the decision, but you were involved in?

Ms. SHERBURNE. Well, I don't know how we characterize it. I reviewed the redactions and made recommendations, and Mr. Quinn reviewed them, and we agreed on how to proceed.

Mr. CHERTOFF. Now the copy we have put up, deletes and puts instead of, I guess an expletive, puts in something in its place, so I don't want you to think we've altered this in some nefarious way.

But this discussion also relates to Beverly Bassett and talks about "if we 'blank' this up, we're done. Let's not talk it to death—let's just get it done." Then if you continue to the next page, which is S20433, do you know who "HI" is, who is apparently the person who is speaking?

Ms. SHERBURNE. I believe that's Harold Ickes.

Mr. CHERTOFF. Was Mr. Ickes in 1994 a person who you understand to have been responsible for coordinating the Whitewater issue within the White House?

Ms. SHERBURNE. I know he certainly had a role. I don't know in January—I guess this was January 7th. I'm not sure of his role. I believe he had a significant role at that time.

Mr. CHERTOFF. Did you notify him on January 4, 1996, later in the evening about the discovery of the billing records we have been talking about?

Ms. SHERBURNE. Yes, I did.

Mr. CHERTOFF. Do you remember what time of day you notified Mr. Ickes?

Ms. SHERBURNE. I know it was very late at night, after 10 p.m.

Mr. CHERTOFF. Did you notify him because he was the person to whom you report on Whitewater matters?

Ms. SHERBURNE. I report to both Mr. Ickes and to Jack Quinn, who is Counsel to the President. And I notified Mr. Ickes because yes, I did report to him.

Mr. CHERTOFF. Finally, on page S20433, it says next to HI, "We can't send PB, BL, MW." Do you know who MW refers to here?

Ms. SHERBURNE. No, but based on the previous page, I would suspect it's Michael Waldman, but I don't know that.

Mr. CHERTOFF. Michael Waldman. It says, "It will come out." Then it goes, "Item by item make sure her story is OK." Finally, there's a reference at the bottom that says, "Quinn—arm's length." Do you know, was Mr. Quinn in the White House in 1994?

Ms. SHERBURNE. Yes, I believe so.

Mr. CHERTOFF. What was his position?

Ms. SHERBURNE. I don't know if he was Chief of Staff to the Vice President at that time or if he was Counsel to the Vice President.

Mr. CHERTOFF. Who is Skip?

Ms. SHERBURNE. I don't know. Mr. Chertoff, I don't—I haven't talked to Mr. Gearan about these notes so I'm not sure what these things mean. I really am reluctant to try and characterize them or identify the handwriting.

Mr. CHERTOFF. Could it be Skip Rutherford?

Ms. SHERBURNE. I don't know.

Mr. CHERTOFF. If you didn't talk to Mr. Gearan, what I guess I'm curious about is how one could redact a document, the entirety of which is labeled "Whitewater," and appears to be several pages of discussion of a meeting on Whitewater, how one could decide what to redact. But you may not be the right person to ask—

Ms. SHERBURNE. I think I am the right person to ask because I supervised the redactions. It's precisely because of your curiosity that we are offering to let you review the unredacted portions.

The CHAIRMAN. I think that's quite fair.

Ms. SHERBURNE. May I just add one other thing about the production and the discovery of those records, since you have raised an issue about having only received them yesterday, because I think it's important, in this particular hearing where we're talking about the sufficiency of document searches, to establish just how it is that we located these documents. I think it is an indication of the diligence with which we've proceeded.

We received documents from Mr. Gearan's lawyer that were copies of records that he believed had been sent by Mr. Gearan to Records Management when Mr. Gearan left the White House last fall. And when we got the copies, we realized that the search we had done of Mr. Gearan's records in Records Management had not turned these documents up. So we began an inquiry about why didn't Records Management have the originals of these documents. That inquiry is what led to discovery of these documents at the Peace Corps where Mr. Gearan had inadvertently taken them. So it was the diligence with which we were trying to comply with your request that led to the production.

Mr. CHERTOFF. But since you raise it, Ms. Sherburne, let me ask you this. You received a request for documents on August 25, 1995, from this Committee that set forth a whole list of things based on the Resolution; right?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. When was the first time you circulated a memorandum in the White House asking people to produce responsive files in response to that request or any later request?

Ms. SHERBURNE. We circulated several memoranda along the way. We had, as you know, several communications with you, I believe, mostly with Mr. Giuffra, about the meaning of that request. The request that we received on August 25th, which was approximately, I believe, 3 months after the passage of the Resolution, essentially just lifted the language from the Resolution and put it in the request.

Mr. CHERTOFF. Which is what the subpoena in late October also did; right?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. But my question, which you haven't answered yet, is, when did you first circulate any memo around the White House calling for people to produce documents in response to the first request or any later request after August 25th?

Ms. SHERBURNE. I believe the request for billing records was not sufficiently defined until October 17th and the first request that we circulated that asked specifically for billing records, which by the way the August 25th letter did not ask for, was on October 23rd.

Mr. CHERTOFF. But I still have a question you haven't answered. With respect to anything in that August 25th letter, anything, when was the first time you circulated anything within the White House to request people to collect, produce, and gather documents so they could be produced in response to anything in the August 25th letter?

Ms. SHERBURNE. I believe it was, although I'll have to verify this from the records, I believe that the first time that we had sufficient clarity—although I would hardly call it that, frankly—to circulate a request to the White House was, I believe, October 4. We had to, on October 6, because on October 5, Mr. Giuffra changed his mind about the scope of the search, we had to send out clarifications for that. That was for a limited part of the August 25th letter.

We had worked with Mr. Giuffra to establish priorities for our search. Mr. Giuffra for quite awhile was unwilling to identify priorities. When he did, we were able to circulate a request White House-wide for the first five items in the August 25th letter as modified by subsequent communications with Mr. Giuffra.

Mr. CHERTOFF. Well, Ms. Sherburne, I want to make sure we are very clear on this. Between August 25 and October 4, you did not circulate anything in the White House to tell people that they ought to hold on to their Madison—or to files related to Whitewater in any way, or to indicate that they should start the process of going through it to collect it so it could be reviewed?

Ms. SHERBURNE. Before October 4th, we did not have sufficient direction, clarification from this Committee to do that in a responsible way so that we had any assurance that we could possibly get anything that was reliable or that we could certify to you was responsive.

Mr. CHERTOFF. But I'm not even asking you whether before October 4th you could have responded. I'm just asking when you got an August 25th request, which literally took the language of the Resolution and is, in fact, virtually identical to the subpoena we ulti-

mately issued here, am I correct that between August 25 and October 4, you didn't circulate anything around to tell people—because you have raised this issue with Mr. Gearan taking the documents out—do not disturb or remove anything relating to Whitewater? You didn't circulate any memo relating to handling of Whitewater documents in response to our subpoena—our request on August 25 until October 4?

Ms. SHERBURNE. It was not until October 4th that we had sufficient clarification from the Committee of any of its requests that we could put anyone on notice in any meaningful, comprehensible way. I had several meetings with Mr. Giuffra. On September 5, we met and I told him that the August 25th request as presently stated was confusing, that it would be difficult to give direction to White House employees as to what specifically they should search for, and that we needed priorities. We didn't get sufficient clarity until October 4.

Mr. CHERTOFF. I just want to close up on this I—

Ms. SHERBURNE. And that, by the way, was only with respect to A through E in the August 25th letter.

Mr. CHERTOFF. Let me make an observation, and then give you a letter that was addressed to you on September 6, 1995. Do you have a copy of the September 6th letter from Mr. Giuffra to you?

Ms. SHERBURNE. Yes, I do.

Mr. CHERTOFF. It's the third page of this letter.

Ms. SHERBURNE. Yes.

Mr. CHERTOFF. I am going to close this off in a second, but this specifically makes a request for any documents or records in any form that reflect, refer, or relate to the Rose Law Firm's representation of Madison; right?

Ms. SHERBURNE. I believe that what this does—we had told Mr. Giuffra that the August 25th letter asked for the following:

Documents related to the policies and practices of the RTC and the Federal banking agencies, as that term is defined in Section 3 of the FDIC Act, regarding the legal representation of such agencies with respect to Madison.

I told Mr. Giuffra that that request, as stated, was something I did not believe White House staff would understand and asked if he would clarify it. He clarified it on September 6th with a description asking for Rose Law Firm's representation of Madison or representation of the RTC with regard to Madison.

Mr. CHERTOFF. So you will agree with me that on September 6th it was crystal clear that there was a request for documents that reflect, refer, or relate to the Rose Law Firm's representation of Madison; right? It was in the letter—

Ms. SHERBURNE. On September 6th, yes, that was one portion of the request that Mr. Giuffra had responded to for clarity.

Mr. CHERTOFF. By the way, when you collect documents from the White House, you essentially circulate a memo and rely on the individuals to dig into their files and give you the documents?

Ms. SHERBURNE. If the request goes to White House staff, that goes to over 500 people, and yes, we do specifically rely on the individuals who receive the requests to search their files.

Mr. CHERTOFF. After receiving the September 6th letter, when did you first tell people to look for documents relating to the Rose Law Firm's representation of Madison?

Ms. SHERBURNE. After receiving the September 6th letter, which also addressed a number of different issues, we asked Mr. Giuffra for priorities, which he finally gave us, and told us to emphasize collection of documents in paragraphs A through E. This was paragraph H of the August 25th letter. So our first request was in October for White House-wide—or a White House-wide search.

With respect to documents requested in paragraphs F through H or through L of the August letter, which this request was also part of, we circulated that request at the point at which—throughout this period we were requesting of Mr. Giuffra a cutoff date. We were negotiating a cutoff date. That issue had not been resolved.

We had informed the Committee that we could not circulate a request to the White House until we had a cutoff date. We proposed cutoff dates. We proposed March 4, as a cutoff date on September 21. On October 17, Mr. Giuffra said that we could have the March 4th cutoff date for this item H.

On October 23, we circulated the first White House-wide request for these records in response to Mr. Giuffra. I wrote a letter to the Committee on October 23, making it perfectly plain that you had now, only now, enabled us to search for these records.

The CHAIRMAN. Before I go to Senator Hatch with a few minutes remaining, let me tell you, Ms. Sherburne, one of the problems is that we do not believe that we have had the kind of cooperation that the Committee should be having. That's based on a number of incidents, not the least of which is this, because I believe that it is disingenuous to say that they could not have begun a document search for, clearly, those relevant matters—

Ms. SHERBURNE. Mr. Chairman, I didn't say we didn't do a document search. We did do a search. We didn't do a White House-wide search. Excuse me for interrupting, but there's an important distinction there, which I'm happy to explain to you, because we had produced over 7,000 pages by October 23.

The CHAIRMAN. I'll give you an opportunity to do that. It doesn't matter if you produced 7,000 pages, but key documents are withheld or not made available, and let's hope that it is just because it fell through the cracks, and if that's the case, that's fine. I'm not prejudging that.

But one of the things, I have to tell you, that troubles me tremendously and greatly is the remarks that come from the White House spokesperson in requests that are genuinely put forward for E-mail, electronic mail, relative to the matters that we are concerned about.

When we get remarks from an attorney and a spokesperson for the White House that says, let some fat cat of the Chairman's pay for the production of this, that is absolutely—that's not responsible, it's inappropriate, it's not right; and I certainly don't think that you condone that kind of remark.

If we are asking for materials of a private nature that we have no right to seek, I could understand saying you're going well beyond, but when we ask for electronic mail as it relates to those matters that this Committee has been charged with reviewing, then I have to tell you, the response has been absolutely, totally deficient. I heard that a contractor was supposedly hired. Now the

contractor hasn't been hired. And we are talking about months and months and months.

Now, you say that you're going to go forward and produce these documents. It is inconceivable to me that—and it looks like, when I hear these remarks that come from the spokesman and the political spin doctors, you're not going to dissuade this Committee from seeking the facts and the truth. That's what adds to the problem.

It is not just one thing, it is a pattern. So I say that we need this, we are entitled to this, and we are going to continue to pursue it. I would hope that we do not have to seek enforcement, but it comes down to that. It's the same matter with the diary. It takes us to a point that we seek almost a Constitutional test, and that's not right.

Now don't forget, this is the White House that says we're going to cooperate, we will make things available. Well, it seems to me that they were looking at a timeline and that if we could get past that timeline we wouldn't have to produce these documents. After all, the Committee's authority is over.

Senator Hatch.

Ms. SHERBURNE. Mr. Chairman, may I respond to that first, please?

The CHAIRMAN. I will give you an opportunity later, but I know Senator Hatch wants to—I'm just telling you what troubles me, but the only problem is we're on the clock, and I will give you an opportunity to respond.

Senator SIMON. Mr. Chairman, it does seem to me that you made some allegations, and she should be entitled to reply.

The CHAIRMAN. I'm going to ask that the clock be shut down and you can respond. Go ahead.

Ms. SHERBURNE. Mr. Chairman, I have a different view. I have heard your remarks, both outside this Committee and inside this Committee, about White House cooperation, and your dismay with our cooperation and your belief that our cooperation justifies the continuing work of this Committee beyond February. I have—

The CHAIRMAN. Well, let me ask you. There is the question of the E-mail. Address that, please, and address the response.

Ms. SHERBURNE. I'd be happy to address the question of E-mail.

The CHAIRMAN. How long ago did we ask you for the E-mail?

Ms. SHERBURNE. The first request for E-mail that we received was on October 17, and that—

Mr. CHERTOFF. It was August 25, I think.

Ms. SHERBURNE. No, I'm sorry.

The CHAIRMAN. In other words, you didn't know what was in the memo and there was a question of clarity on August, et cetera?

Ms. SHERBURNE. Senator, that simplifies a very complicated, technical problem, and you're misleading people.

The CHAIRMAN. No, I'm not misleading.

Ms. SHERBURNE. Mr. Chairman, let me explain.

The CHAIRMAN. And I haven't characterized your comments as misleading, nor have I suggested that you have been withholding, but I'm suggesting that when a spokesperson comes out and says, "Let some fat cat pay."

On August 25th, "Accordingly, please provide all records, regardless of format, including, but not limited to, E-mail." Now, my gosh, we talked about this.

Ms. SHERBURNE. Mr. Chairman, in the summertime when you asked for E-mail related to the Foster inquiry, we all went to school on how to retrieve E-mail, as your staff did. What we explained to your staff at that time was that E-mail in the White House was very difficult to retrieve up through July 1994. And the reason for that was because in the Bush Administration, there had been a decision not to retain E-mail or keep it in a retrievable form. There is a way to do it, but you need to specify the specific weeks and the specific names of the people whose E-mail is to be searched. It's cumbersome, it's expensive, it's time-consuming and we all learned that in the summer.

We worked through, with your staff, the specific requests for the specific time periods and your staff was fully aware on August 25 that a blanket request for E-mail without regard to specific names of people whose E-mail had to be searched was something that was not doable. In September—

Mr. CHERTOFF. We gave you on September 6th, and you've given very lengthy answers, Ms. Sherburne, but the point is this: You asked for clarification, and then interpretation of clarification. Two things should have happened right away. First of all, someone should have made a start on the process. Whatever week it was going to be, whether it was what we said on September 6 when we laid out a number of priorities or not.

But more important than that, and I raise it only because you told us Mr. Gearan inadvertently took things out, and I don't dispute that, I will tell you and I will tell you from my experience in the Department of Justice, when it was common to have Congress request from 1994 U.S. Attorneys or 1993 U.S. Attorneys everything relating to a year's worth of activity.

The very first thing that happens is you give everybody, who is potentially the subject of the subpoena or the request, notification not to disturb anything that might be relevant. And I understand there are issues that have to be hashed out—

The CHAIRMAN. Look, we are now going beyond and intruding on the Minority's time, and I thank them for their patience. But we're trying to give you an opportunity to respond. The fact of the matter is that if we came to an agreement in October, this is November, December, January, February. Where is it and what have you done? Where is the E-mail?

Ms. SHERBURNE. Mr. Chairman, as you know, we have started to produce the E-mail. In October, we wrote back to you and said that the request, as finally defined, would cost \$125,000, and that we did not have an appropriation in the White House sufficient to cover that, and we asked to engage in discussions with you about how to pay for it.

The CHAIRMAN. That's disingenuous at the least.

Ms. SHERBURNE. That's what you said at the time as well.

The CHAIRMAN. I saw Mark Fabiani's remarks about \$250,000 and get a fat cat to pay for it, not \$125. So I'm just telling you, this disturbs me. The manner in which that request has been handled was inappropriate.

Ms. SHERBURNE. We did in January—

The CHAIRMAN. I'm not going to argue with you about it. Senator Hatch, in the 2 or 3 minutes that you have.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

Ms. Sherburne, I personally want to apologize to you for an earlier hearing where I—it was an exciting hearing and I certainly didn't mean to offend you in any way so I want you to know that.

Ms. SHERBURNE. Thank you, Senator.

Senator HATCH. I want to thank both of you for being here today. I understand the sensitive positions that you are in, since you both represent the President and the First Lady, and you are now witnesses in this investigation and in the investigation of the Independent Counsel. So I know it is a difficult position, one in which your very representation of the individuals under investigation itself leads you to be part of this as well.

Ms. Sherburne, I would like to ask you questions about the memo the White House provided to us last night. As I understand it, the memo records a meeting that occurred on January 7, 1994, at 5:30 p.m. Only a few days after President Clinton had read an editorial in the newspapers about Beverly Bassett Schaffer and handwrote on it, "will she hold up," and after President Clinton himself had talked to Ms. Schaffer at a basketball game in Arkansas. The timing of this meeting is critical and no one can underestimate Ms. Schaffer's importance to this investigation, since as the Arkansas State Securities Regulator, she had oversight over much of the activities of Madison Guaranty, and that's important.

Now as I read this memo, which I understand contains the heading "Whitewater," it seems to me to describe a meeting about how to coordinate Beverly Bassett Schaffer's story. My colleagues have and certainly will discuss the import of some of the language in this memo, but let me say that I personally am disturbed a little bit about some of the implications of this language, particularly that someone was going to be sent to meet with Ms. Schaffer and that holes had to be poked in "their story," and that "if we F--- this up, we're done," I wonder what that means.

I don't know whether you know or not, but I wonder what that means. Could it mean that Ms. Schaffer does not get—if she does not get the story right, the President could be done, to put it in a bad light, but nevertheless one that is naturally implied there? The memo then states, "Let's not talk it to death, let's just get it done."

What I'm hoping is that there was no effort on the part of these White House aides either to influence Ms. Schaffer's story or to convince her to change her recollection of important events. Can you enlighten us on that at all?

Ms. SHERBURNE. Well, I believe that, you know, as I said I didn't take these notes, I wasn't there at the time.

Senator HATCH. Sure. No, I'm not holding you to that.

Ms. SHERBURNE. But I think another possible interpretation of the remarks there is that people were trying to understand what the facts were. Ms. Schaffer obviously knew the facts. I think, as we heard from Mr. Lindsey's testimony, that Ms. Schaffer's husband had said that because she had been harassed in some way

during the campaign, that she was unwilling to step forward as a spokesperson. But she still clearly had possession of facts that people needed to confirm, and that "tried to poke holes in their story" may refer to the story or the understanding of the facts that the White House had, and to try and understand what Ms. Schaffer knew. I don't know.

Senator HATCH. You personally do not know what those words mean?

Ms. SHERBURNE. No, I don't.

Senator HATCH. So they could mean either?

Ms. SHERBURNE. That's right.

Senator HATCH. The interpretation I have given or the one you just gave?

Ms. SHERBURNE. Yes.

Senator HATCH. I see. But what is more disturbing to me is the manner in which these documents have been turned over. Now, I appreciate it personally, that you've said that Counsel here can read the redacted portions, but these documents have been under subpoena, at least in our opinion, since the August date in 1995 and just turned over—

Ms. SHERBURNE. The subpoena was in October, Senator.

Senator HATCH. OK. The subpoena was in October, but the documents were requested back then. Now, I'm very concerned about this because we've had criticism because the Chairman has said that we need to extend this Committee, and yet a lot of the what appear to be very important documents haven't been delivered until just recently.

And frankly, as the Chairman has said, we haven't even gotten the E-mail materials and a lot of other materials here and we have what, 2 or 3 weeks to go with the life of this Committee, so I can understand why the Chairman is going to have to move to extend the life of this Committee until we just put these things to bed. I personally hope everything is just fine for you, but the fact is that's why it has to be extended.

Ms. SHERBURNE. Senator, no one is more dismayed than I when these documents turn up late, I can assure you. But we recognize our obligation to quickly turn them over to the Committee as soon as we get them, whenever we get them.

Senator HATCH. But there's also this business of redaction. We have seen that time after time. We have to keep fighting to get the words in the redacted part. Now the memos you have turned over have numerous redactions. If you look at these documents and you look at the pages, there are 3 pages but most of them are redacted. Someone—I think you said you made the redactions, you have—

Ms. SHERBURNE. I supervised it, yes.

Senator HATCH. You supervised it. Well, you've decided to erase about half of each page.

Ms. SHERBURNE. Because we determined that it wasn't responsive to the Committee's subpoena, Senator.

Senator HATCH. You look at the other memo recording a meeting in Mack McLarty's office, all but the first 3 pages have been covered up. And look at this memo on January 5th, out of 5 pages, the first 3½ have been redacted. I take it Counsel can review every one of those?

Ms. SHERBURNE. Absolutely.

Senator HATCH. OK. I think that's good, but on what grounds do you choose to decide what should be redacted and what should not be redacted?

Ms. SHERBURNE. It's responsiveness. If there is a document, this was a legal pad, we go through it and look at what on the document responds to the Committee's request, and if there's material or information there that is plainly unrelated, we redact it.

On something like this, I think we're willing to let Counsel look at it because it does say that the subject of the meeting was Whitewater, and so I think it's perfectly reasonable to infer that the redacted material may be related, so we are happy to have you verify it.

Senator HATCH. All right. Well, what I'm concerned about is that if there is relevancy to that, it then has to be brought out so that the people will know about it. I think I'll let it go at that.

The CHAIRMAN. Thank you, Senator.

Let me just say, we went considerably over the time. I want to thank the Minority because we were able to keep things in some type of order. I am going to ask how much we went over and that an equal amount of time be given to the Minority. Again, I thank the Minority.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Well, Mr. Chairman, I'm glad this issue has come up, because I think it needs some public airing, and I want to pursue it now with Ms. Sherburne.

The Minority did not sign the August 25th request. The reason we did not sign it is that we viewed it as being overly broad, so much so that it, in fact, would impede getting information rather than contribute to getting information.

Now, people have to judge that for themselves, and to really understand this, one needs to go through each stage of it, the nature of the requests that were being made and the response that was being offered by the White House. In fact, there was an extended correspondence. Is that not the case, Ms. Sherburne?

Ms. SHERBURNE. It fills two 3-inch, 3-ring binders, since the 25th of August.

Senator SARBANES. That's right. Now subsequent to August 25, an effort was made to try to get this into some form that would be reasonable, rational, and that could be responded to; correct?

Ms. SHERBURNE. That's correct.

Senator SARBANES. Mr. Chairman, let me just give you an example of the problem. In fact, we said when we filed our report in the Senate a few weeks ago:

The Majority's report's description of the obstacles faced by the Committee in obtaining documents and testimony from the White House does not allow for the breadth and complexity of the Committee's various document requests. In a number of instances, the White House experienced difficulties in complying with document requests because some of the Majority's requests were extremely broad and burdensome.

A good example of this problem is the document requests the Majority sent to the White House in September. That's the letter that was referred to you by the Majority here this morning. If you could

turn to it, that's the September 6th letter to you from Mr. Giuffra. Do you have that in front of you?

Ms. SHERBURNE. Yes, I do.

Senator SARBANES. I direct your attention to the second page of that, paragraph "d," and let me just quote that paragraph, because we cited this as a good example of this problem of extremely broad and burdensome requests. Paragraph d said: "Any communication, contact or meeting between January 20, 1993 and August 5, 1994." That was a period of 18½ months. "Any communication, contact or meeting between January 20, 1993 and August 5, 1994, including, but not limited to, all records of telephone conversations or wire communications, relating to any subject, between"—the Clintons or any present or former member of the White House staff. How many people might that involve, any present or former member of the White House staff?

Ms. SHERBURNE. I don't know how many former members there would have been at that time. We did not seek to reduce it to a number but it would certainly, I assume, have been dozens, if not hundreds.

Senator SARBANES. All right. On the one hand, this was any communication whatever between this large group. And in subparagraph "ii," it then lists approximately 50 people; is that correct?

Ms. SHERBURNE. Senator, that is correct.

Senator SARBANES. Including any present or former employee of the RTC. How many people could that be, any present or former employee of the RTC?

Ms. SHERBURNE. I have no idea.

Senator SARBANES. Well, literally thousands if you take it at its face value. Would that not be the case?

Ms. SHERBURNE. I believe so.

Senator SARBANES. Then it names specific people. Then we get any present or former employee of Frost & Company—of course, I don't know how many people that might be. Then we list other specific people, any present or former employee of Maple Creek Farms, and so forth and so forth.

Now, we pointed out in our report, we said a good example of this problem is a document request the Majority sent to the White House in September calling for the production of, among other things, any record of any communications, contacts, or meetings over an 18-month period between anyone in the White House—actually should have said "or formerly in the White House"—on the one hand and anyone on a list of approximately 50 people, on any subject matter whatsoever. Now if people would just stop and think about that for a moment, that's an extraordinarily, extremely broad and onerous request.

Ultimately this request was narrowed down, was it not?

Ms. SHERBURNE. Yes, it was.

Senator SARBANES. And of course, in the meantime it slowed up the document production. Now when you finally began responding to the October 17th subpoena, the thrust of that subpoena had been narrowed in accordance with a conversation, so you weren't confronted with providing this kind of information; is that correct?

Ms. SHERBURNE. Well, I think that nothing had been narrowed from the August 25. I think these 56 names and these present and

former employees was actually quite an expansion from the August 25th request, and that was retained as an expansion, even though when it was finally narrowed, it still had been expanded beyond the August 25th request.

Senator SARBANES. But this is what you were encountering all along, was it not?

Ms. SHERBURNE. That's absolutely right, Senator.

Senator SARBANES. Well, I think that it's very important to make that point. In the meantime you were producing documents, were you not?

Ms. SHERBURNE. We produced—by the time we received the subpoena, I believe we had produced about 8,000 pages of documents. What we had done, because we knew, as the Chairman had said, that there were Whitewater related records, records responsive to the August 25th request, we knew we had them in the White House. We knew that they had been collected from prior productions, that they had been collected by people who were working on the issue, and the repository of those various collections was in the Counsel's Office.

So from August 25th forward, we undertook to identify those records that we had already collected in our possession that were undoubtedly, in our view, going to be the best source of material in response to the subpoena, the most voluminous source of material responsive to the subpoena. So we began the search through that material immediately and began producing documents responsive to that material, I believe in the middle of September, documents responsive to those requests in the middle of September.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Now with respect to the E-mail request, those requests started out broad, then they narrowed, and then they expanded again; is that correct?

Ms. SHERBURNE. That's correct. They became sufficiently defined so we could work with them on October 17th. And then they expanded by 50 percent in early January, and then contracted again through a meeting that we had in the middle of January, and then expanded again last week.

Mr. BEN-VENISTE. And last week, how did they expand again?

Ms. SHERBURNE. Last week, we got a request for 3 more weeks of E-mail during the July 20th to August 15th time period. And that request we met, I believe in the middle of January, certainly after the billing records had been produced, and identified the 9 weeks that the Committee wanted of E-mail. This was it. This is what the Committee wanted, subject of course to further discovery of information that would require an expansion of the request. Of course at that time the billing records had been presented to the Committee, but then over the weekend, or maybe it was last Friday, we got an expanded request or modified that added those 3 weeks of E-mail related to the discovery of the billing records.

Mr. BEN-VENISTE. In connection with the request for E-mails and the explanation as to why it is difficult to produce E-mails, it was correct, was it not, that a procedure was reinstituted by the Clinton Administration to make the E-mail discovery more accessible?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. So at a particular point during the Clinton Administration, we don't have, or you don't have the same problems that you have described in producing E-mails; and those requests have been met, have they not?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. Now during the summer hearings, there was a request for the deleted E-mails from two secretaries in the White House Counsel's Office, I believe Ms. Tripp and Ms. Gorham. Do you recall that?

Ms. SHERBURNE. Yes, I do.

Mr. BEN-VENISTE. Those were secretaries who sat across the way from each other, and they were typing out messages to each other on a couple of days right after Mr. Foster's death. There was a request to undelete those E-mails and to find them and to bring them to this Committee. How much did it cost the White House to recover those E-mails?

Ms. SHERBURNE. I believe it cost in the neighborhood of \$30,000.

Mr. BEN-VENISTE. Just for that group of E-mails?

Ms. SHERBURNE. That's correct. That was for a 2-week period.

Mr. BEN-VENISTE. Now, you have indicated that the reason why this is so onerous is because of a procedure put into effect during the Bush Administration that made it extremely difficult from a technological standpoint to recover E-mails; is that correct?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. Yet that process has been ongoing. And to some extent, some of those E-mails were recovered during the Iran-Contra investigation?

Ms. SHERBURNE. I believe that's right.

Mr. BEN-VENISTE. What is the present estimate as to the cost of the recovery of E-mails requested by this Committee, apart from the most recent expansion of that request?

Ms. SHERBURNE. Well, we determined that our only option was to contract with an outside source and get contract workers to assist our technical people in this process. By doing that, although it's difficult to say, some of this technology is being invented as they do it—I believe that the estimates that we have right now is that the cost is somewhere between \$130,000 and \$180,000 to retrieve the E-mail that the Committee has requested.

Mr. BEN-VENISTE. Now certainly if the remark that the Chairman had referred to was indeed made by someone at the White House, it's my view that would have been most inappropriate. But the fact of your communication with this Committee about the cost of the recovery process for these E-mails, and, therefore, the need to be precise about what the Committee needed in order to be responsive and to maintain the minimum amount of cost to comply with us, is indeed reflected in correspondence and meetings that you have had with this Committee; is that not so?

Ms. SHERBURNE. Yes, that's correct. I would like to note, I believe it was in September that the Committee in correspondence—on, I believe, September 21—acknowledged that E-mail had still been not sufficiently defined and that we needed to still work together on that.

Mr. BEN-VENISTE. Then there was a narrowing; and as you say a most recent, again, expansion.

Ms. SHERBURNE. Yes. I would also like to add that the remark the Chairman referred to, I too regarded as inappropriate, and that was communicated to the spokesperson who made it.

Mr. BEN-VENISTE. Indeed, while we are discussing such things, Senator Hatch, as you know, addressed the issue today with you, but privately, he had conveyed a similar sentiment through me to you about the earlier remarks that had been made.

Ms. SHERBURNE. Yes, he did.

Mr. BEN-VENISTE. So this is not something that has been left unanswered. With respect to the question that Senator Hatch posed earlier, I would like to assure him that in the past, where issues of redactions have come before us, I can assure Senator Hatch that both Mr. Chertoff and I have worked with White House Counsel to review all redactions that have been previously made about which there was any question so that we could assure ourselves that the redactions were made in good faith. And, indeed, I believe Mr. Chertoff will join me in saying that there has been no occasion since this Committee has been in existence where a redaction has been made and we have concluded that it has been made in bad faith. There have been occasions where we have asked for additional material to be produced and you have done so; correct?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. I never questioned Ms. Sherburne's good faith and I want to go on the record for that. I know she has a difficult job to do.

Senator HATCH. I appreciate you making those remarks, Mr. Ben-Veniste. It means a lot to me. You also, Ms. Sherburne.

Mr. BEN-VENISTE. If we may turn to what I have regarded as the focus of today's hearing, which is the discovery of the billing records on January 4, 1996. You, Mr. Kendall, were the first, so far as you know, to have received word from Carolyn Huber that records had been found by her; is that correct?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. Could you tell us in your own words what you recall of that event?

Mr. KENDALL. Yes. I was at a meeting at the White House and was handed a note by an Usher, asking me to please see Ms. Huber before I left the White House that day. I went to Ms. Huber's office in the East Wing at about 12:45 p.m. on Thursday, January 4, 1996. I went into Ms. Huber's office. She said to me, David, I have some documents for you, and handed me the sheaf of documents, a copy of which I have before me now.

Mr. BEN-VENISTE. What occurred next?

Mr. KENDALL. I examined the documents. I asked her where these had come from. She indicated that they had come from a box in her office there that, apparently she had had a table moved out that morning and had discovered or focused on the documents at that point.

She appeared to me somewhat nervous, agitated, flustered. She said do you think I have done the right thing, and I thought I had to tell you. I said absolutely, you've done the right thing.

I examined the documents. She—

Mr. BEN-VENISTE. Excuse me, Mr. Kendall. When she asked you whether she had done the right thing, was she referring to the fact

that she had called you to tell you that she had realized that she was in possession of these records?

Mr. KENDALL. Yes, I think—that was my interpretation. And I reassured her, I said—we looked at the documents. She had been office manager of the Rose Law Firm and was familiar with Rose Law Firm documents. She indicated that the handwriting in red appeared to her to be Mr. Vince Foster's handwriting.

Mr. BEN-VENISTE. So I take it you began to examine the documents with Ms. Huber?

Mr. KENDALL. I did. And I told Ms. Huber that I thought we would immediately produce the documents. I tried to reassure her that she had, in fact, done the right thing. I said I thought the documents would indeed be helpful to us. I advised her that she ought to call her attorney, Mr. Schuelke, and safeguard the documents, that I would contact White House Counsel's Office, and that we would have a meeting at a later point.

Mr. BEN-VENISTE. And you did, in fact, contact the White House Counsel, Ms. Sherburne?

Mr. KENDALL. I did, later that afternoon.

Mr. BEN-VENISTE. Did you reconvene to meet?

Mr. KENDALL. We did. We, as I recall, had a meeting set for 4:45 p.m. I think we all got there somewhat later than that, it was I think after 5 p.m. Mr. Schuelke and I and Ms. Sherburne met with Ms. Huber in her office.

Mr. BEN-VENISTE. What was the discussion at that time?

Mr. KENDALL. Well, the discussion again was about what the records were, where had they been, and what some of the writings on them indicated.

Mr. BEN-VENISTE. Ms. Sherburne, you were present at the meeting, throughout this meeting?

Ms. SHERBURNE. Yes, I was.

Mr. BEN-VENISTE. What do you recall Ms. Huber saying about how the records had been located by her?

Ms. SHERBURNE. I recall Ms. Huber as being—she said a number of different things that were inconsistent. She was flustered, she was upset, her hands were shaking. She said that she had brought the documents over from the residence at some earlier point. She said she thought it was maybe 3 months ago. A little while later in the conversation, she referred to bringing them over 10 months ago. She was very confused about the timing.

She also said that—we asked her where she had found the records in the White House. She said they were on the third floor, and she identified the Book Room. I don't know that she used the term "Book Room," but that was what she was describing.

She was unclear about where she had found them. I had the impression, from the various things she said, that they were on top of something, not inside of a drawer or a box, but she was unclear whether she found them on a table or a shelf or—

Mr. BEN-VENISTE. Now, you are referring to when she initially saw the records before she took them to her office?

Ms. SHERBURNE. Yes.

Mr. BEN-VENISTE. All right. So she explained to you a chronology of events from the time she first came into possession of them?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. What was that chronology?

Ms. SHERBURNE. The chronology was that at some earlier point, what appeared to be in her mind somewhere between 3 and 10 months prior to January 4th, she had been in the Book Room in the residence, which is on the third floor, and that she had identified these documents when she was putting a box together or a couple of boxes together of material that she was going to move to her East Wing office, and sort out later and decide what to do with.

Mr. BEN-VENISTE. So although she was unclear about the date when she initially saw the documents, she was clear that they were discovered by her in the Book Room and in the open; correct?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. Mr. Kendall, is that your recollection?

Mr. KENDALL. Yes, it is. Her stories, though, were extremely vague. At one point I recall her indicating that when she had first seen the records, they appeared to her to be Rose Law Firm billing records. But then again at another point, I understood her to say she had first seen these documents and just considered them to be a sheaf of documents.

We really decided early on that Mr. Schuelke, at a later point alone with her, should examine her about the exact way in which she found the documents, that that would be the most appropriate way to proceed.

Mr. BEN-VENISTE. So at some point, you all agreed that further questioning of Ms. Huber would be inappropriate at that time and left it to Mr. Schuelke to go back over the details with her; correct?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. Did either of you take any contemporaneous notes of your conversation with Ms. Huber?

Ms. SHERBURNE. I did not.

Mr. KENDALL. Nor did I.

Mr. BEN-VENISTE. Now the three of you are in the area of Ms. Huber's office and you have heard this recitation by Ms. Huber about her initial discovery of the records and her transportation of them to the Executive Office Building office that she maintained. What happened next?

Mr. KENDALL. We decided that we had to review the documents more carefully so we moved to an office down the hall, which was a little bit bigger than Ms. Huber's office. Ms. Huber was able then to sit at a desk and review the documents with us page by page, as the three of us stood around her and could observe each page.

Mr. BEN-VENISTE. What did you learn as a result of that review with Ms. Huber?

Mr. KENDALL. That each of these pages did appear to in some way reflect law firm records of the billing for the Madison Guaranty representation in the 1985-86 period. There was a little work in 1987. And the top document appeared to be a client billing and payment history, which had a run date of February 12, 1992. She also identified various handwriting in the documents. She also was able to answer questions about certain accounting practices at the Rose Law Firm.

Mr. BEN-VENISTE. So now what time did this review conclude, approximately?

Mr. KENDALL. My best estimate is that it probably concluded—it lasted from 30 to 45 minutes, probably concluded around 6:30.

Mr. BEN-VENISTE. What did you do next?

Mr. KENDALL. Well, we had had a discussion during this review about how to copy, how to produce the documents, what we needed to do after we ascertained that they were indeed producible—

Mr. BEN-VENISTE. When you say they were producible, you mean that your review of the records with Ms. Huber reflected clearly, by that point, that they were called for by certain requests that were already in existence by various agencies of the Government?

Mr. KENDALL. That is correct. And at the end of that page-by-page review, we concluded that the documents were. We had had a discussion—

Mr. BEN-VENISTE. Probably at the beginning of the review, Mr. Kendall?

Mr. KENDALL. Well, it wasn't clear, Mr. Ben-Veniste, what all these documents were. Certainly the top page would have been producible, but there really was a need to examine the documents.

Mr. BEN-VENISTE. I don't mean to quibble with you. So you go through them, it's 6:30 p.m. and you make a determination to photocopy the documents?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. Now at that point or theretofore, did you have any conversation about whether you ought to phone Independent Counsel or any other agency that had requested the documents?

Mr. KENDALL. We had had a discussion, both during the review and then after the review was completed, in which we had jointly decided that we needed to produce the documents as quickly as possible, we needed to keep a copy, and we should get this done as quickly as possible.

Because some of the comments, though, were in color—

Mr. BEN-VENISTE. You mean the handwriting on the documents?

Mr. KENDALL. The handwritten comments and the Post-its, we felt that it was necessary, because there were more agencies than one that we were going to be producing to, that we obtain a color photocopy. Ms. Huber and Ms. Sherburne set out at the end of our review process to try and locate, in the White House, a color photocopier.

Mr. BEN-VENISTE. I take it you were able to do so and then proceeded to photocopy the documents?

Mr. KENDALL. That's correct. A color copier was located in the New Executive Office Building, and between about 7 and 10 p.m. we were able to make two copies. It was a very slow, slow process.

Mr. BEN-VENISTE. And during that period of time, was Ms. Huber present?

Mr. KENDALL. She was.

Mr. BEN-VENISTE. During the photocopying process?

Mr. KENDALL. She was.

Mr. BEN-VENISTE. And by the time you had made the two copies, you say it was about 10 in the evening?

Mr. KENDALL. That's my recollection.

Mr. BEN-VENISTE. What occurred next?

Mr. KENDALL. I took the original of the documents and one color copy with me back to my law firm. I left at the White House with

Ms. Sherburne the other color copy. And then at my law firm, we produced that night and the next morning copies for the various agencies from the copy that we had made the night before.

Mr. BEN-VENISTE. Did you ask questions at that time of Ms. Huber as to where she thought the documents had originated, beyond the point of her finding them in the Book Room at some point some months ago, be it 10 or 3 or however many?

Mr. KENDALL. No. I think that once we left her office in the East Wing, there was an agreement that Mr. Schuelke, her own lawyer, would—when she was perhaps more rested, would examine her in detail as to what she could recall about the circumstances of her discovery of the documents.

Mr. BEN-VENISTE. Ms. Sherburne, do you have anything to add about conversations that occurred with Ms. Huber or others up to the point that Mr. Kendall has taken us, at 10 in the evening?

Ms. SHERBURNE. Well, I believe he has covered most of it in a general way.

Mr. BEN-VENISTE. Do you have any specifics to add?

Ms. SHERBURNE. The only specifics that I have to add is that we did have an extended discussion in the hallway about who should produce the records, whether Carolyn should produce them, through Mr. Schuelke, whether the White House should produce them, or whether Mr. Kendall should produce them. And we also discussed whether or not the handling of the records themselves at some point might interfere with an interest in fingerprinting the records, and if that should affect how we proceeded. We talked about those two issues before proceeding to do the copying.

Mr. BEN-VENISTE. What did you conclude?

Ms. SHERBURNE. We concluded that the records would be produced by Mr. Kendall, and we concluded that we would proceed to copy the records so that they could be produced as promptly as possible to all the entities that had subpoenaed them.

Mr. BEN-VENISTE. Who took possession of the original document that Ms. Huber had located?

Ms. SHERBURNE. After the copying?

Mr. BEN-VENISTE. Yes.

Ms. SHERBURNE. Mr. Kendall did.

Mr. BEN-VENISTE. Who took possession of the copies?

Ms. SHERBURNE. Mr. Kendall took 1 copy and I retained a copy.

Mr. BEN-VENISTE. Now did there come a time when the President was notified of the fact that the records had been found?

Ms. SHERBURNE. Yes.

Mr. BEN-VENISTE. Did you participate in that?

Ms. SHERBURNE. Yes, I did.

Mr. BEN-VENISTE. Approximately when was that?

Ms. SHERBURNE. That was the morning of January 5th.

Mr. BEN-VENISTE. The next morning?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. Approximately what time was that?

Ms. SHERBURNE. I am not sure what time it was. I believe it was probably in the morning before noon, and probably somewhere between 10 and 12.

Mr. BEN-VENISTE. Who was present at that time?

Ms. SHERBURNE. It was myself, the President, and Mr. Ickes.

Mr. BEN-VENISTE. Was there a time when the First Lady, Mrs. Clinton, was notified that the documents had been located?

Ms. SHERBURNE. I believe Mr. Kendall notified her.

Mr. BEN-VENISTE. Mr. Kendall?

Mr. KENDALL. Without getting into specifics, I drafted a press release later that day, indicating that she had learned of the documents that day—excuse me, January 5th.

Mr. BEN-VENISTE. And did there come a time when any agency of Government apart from the White House was notified? Obviously there did.

Ms. SHERBURNE. Yes.

Mr. BEN-VENISTE. Was that on January 5th?

Ms. SHERBURNE. Yes, it was.

Mr. BEN-VENISTE. Who was notified?

Ms. SHERBURNE. The first notification was made in a conversation that Mr. Kendall and I had with Mr. John Bates, who is the Deputy Independent Counsel.

Mr. BEN-VENISTE. So the Independent Counsel's Office was notified, and, obviously, this Committee was notified on that day as well, and indeed received a copy of the billing records on January 5th; is that correct?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. So the determination was made that—

Mr. KENDALL. Excuse me, Mr. Ben-Veniste, the RTC/FDIC was notified, and the House Banking Committee was also notified.

Mr. BEN-VENISTE. Thank you. And a release of information was made regarding the discovery of the billing records and the fact that they had been turned over; is that correct?

Mr. KENDALL. That's correct. They were publicly released later that afternoon, Friday, January 5, about 6 p.m., as I recall.

Mr. BEN-VENISTE. Did there come a time the determination that they would be released to the Committee the following day was made by you in consultation with each other, I take it, on January 4th; is that correct?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. There was no discussion between you about doing anything other than turning those papers over on the following day; is that correct?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. Let me turn to the question of the Gearan records which were transmitted along with a cover letter. Incidentally, the cover letter that we received last evening reflected that the process of recovering the White House E-mails has been underway and that the first review reflects that nothing responsive to the scope of our request has been found; is that correct?

Ms. SHERBURNE. That's correct. We have completed the first of the 9 weeks of the request and there was nothing in the first weeks that was requested that's responsive in any way.

Mr. BEN-VENISTE. Now with respect to the notes of Mr. Gearan which were turned over to the Committee last evening, let me ask you, Ms. Sherburne, to explain how it was that those notes were not produced earlier. What is your understanding of where those notes were located and the circumstances under which you were able to locate them?

Ms. SHERBURNE. My understanding is that Mr. Gearan had kept a box of documents related to—that he maintained that he had frozen, if you will, all of his records that were arguably related in any way to any of the ongoing investigations, whether it's this one or the Travel Office or anything else. And in this box, from this box, his lawyer had copies of some of this material.

We had received a document request for subpoena from the Independent Counsel that required a research of Mr. Gearan's records that I understand his counsel undertook from the set that he had, and he had produced copies to us as a result. It was related to that subpoena, and that was what created a concern that we didn't have the originals because these documents should have turned up in our earlier search of these records that Mr. Gearan sent to documents management.

Mr. BEN-VENISTE. So if I understand you, you now had a clue that led you to believe that further inquiry would be necessary or would be warranted to determine whether additional records responsive to our requests and the requests of others were in existence somewhere?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. And then you pursued those leads and what occurred?

Ms. SHERBURNE. Well, we discovered that the Office of Records Management said that they didn't have the originals. And so we contacted Mr. Gearan's attorney and told him that and asked him if he could initiate some sort of verification of where those originals may have gone, if they were lost somewhere in the bowels of Records Management or if Mr. Gearan had made a mistake. It was following that inquiry that we learned that in fact the records, the box, had been mistakenly included with other material that Mr. Gearan took with him to the Peace Corps.

Mr. BEN-VENISTE. Now can you say how many hours have been devoted by you and your staff to complying with the requests that have been made by this Committee?

Ms. SHERBURNE. It's thousands of hours.

Mr. BEN-VENISTE. Thousands?

Ms. SHERBURNE. Thousands.

Mr. BEN-VENISTE. Everytime a request goes to the White House staff for one or another or subsequent requests for documents or information, do you have any idea of how many hours are involved in those people complying with your requests to search?

Ms. SHERBURNE. I know that it's obviously different for different people. There are some people who, for example, have to review phone messages repeatedly. Each request always asks for phone messages that identify communications with a particular person or persons. And going through 2 or 3 years' worth of phone messages to see if there are any responsive records has been incredibly time-consuming for a number of senior White House staff who receive hundreds and hundreds of phone calls. And that process has to be repeated over and over again, searching for files of communications with people that are unrelated to Whitewater or Madison; we have gotten requests for meetings related to any subject.

So to search—when you don't have a particular Whitewater file or Madison file or a press file that you look at. You have to search

through all of your records to identify meetings that may have occurred with any of the individuals specified in the request.

It's different for different people. I'm sure there's some segment of the White House staff that knows that they have never had any connection with these activities and can dismiss it rather simply without checking through every single piece of paper.

That was not true in this request for communications with 56 individuals on any subject. That was one where we had a lot of people who thought at one time or another they may have had some communication with any one of these 56 individuals, and they did have to go through their records. And that one was enormously time-consuming, but to put a number on it, a number of hours is very difficult. It's substantial.

Mr. BEN-VENISTE. Thank you, Ms. Sherburne.

Mr. Chairman.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

You are the Counsel for the White House, is that correct, to the President?

Ms. SHERBURNE. Special Counsel, that's correct.

Senator SHELBY. You are an attorney, is that also correct?

Ms. SHERBURNE. Yes, sir.

Senator SHELBY. Mr. Kendall, you are a private practicing attorney but you are Counsel to the President and Mrs. Clinton in a private way?

Mr. KENDALL. That's correct.

Senator SHELBY. You do not work for the U.S. Government?

Mr. KENDALL. I do not.

Senator SHELBY. On this occasion when Ms. Huber notified you that she had recently discovered or found these missing records, billing records, did you first, Ms. Sherburne, call Mr. Kendall? Was that the first person you called?

Ms. SHERBURNE. Actually, Senator, Mr. Kendall called me.

Senator SHELBY. He called you up?

Ms. SHERBURNE. Yes.

Senator SHELBY. Ms. Huber called Mr. Kendall, and Mr. Kendall called you as Counsel; is that correct?

Ms. SHERBURNE. That's the sequence, yes.

Senator SHELBY. Now both of you people are attorneys. Do you believe that protecting the integrity of a possible piece of evidence is important?

Ms. SHERBURNE. Certainly.

Senator SHELBY. Do you, Mr. Kendall?

Mr. KENDALL. Certainly.

Senator SHELBY. In this case these missing records that had been under subpoena by the Independent Counsel, I understand, and a request by this Committee, when you found out, both of you, that they had been so-called discovered, I believe you used the term, you were dismayed; is that right, Ms. Sherburne, your term?

Ms. SHERBURNE. I think I was referring to the Gearan notes, but I was certainly dismayed at this as well.

Senator SHELBY. What about you, Mr. Kendall?

Mr. KENDALL. I think my first reaction was surprise.

Senator SHELBY. Surprise?

Mr. KENDALL. But then also as I indicated to Ms. Huber, I was pleased by their discovery because I thought they would be quite helpful, and I think, properly understood, they are.

Senator SHELBY. But you realize that those records were being sought by the Independent Counsel, Mr. Starr; is that correct?

Mr. KENDALL. I did.

Senator SHELBY. Why, then, sir, or to both of you, when you knew what these records were, why didn't you call Mr. Starr that afternoon on the 4th?

Mr. KENDALL. Well, we called him very quickly the next day.

Senator SHELBY. I know that. But why didn't you call him that day?

Mr. KENDALL. Well, for one thing, I wanted to meet with the White House Counsel's Office, to meet with Ms. Huber's lawyer and to determine exactly what the documents were, whether they were indeed producible. We owed them, Senator Shelby, not only to the Independent Counsel but also to other investigative entities.

Senator SHELBY. But you saw these records, you saw handwriting on the records, some of it in red ink?

Mr. KENDALL. That's correct.

Senator SHELBY. Which supposedly was Vince Foster's notes and others. So you had reason to believe that they were genuine billing records, did you not?

Mr. KENDALL. Well, I didn't know until we had really scrutinized them, but certainly, I thought when I first saw them that's what they appeared to be. They appeared to be copies, excuse me. They were not the originals. They were photocopies of billing records.

Senator SHELBY. But they had original writings on them, did they not?

Mr. KENDALL. They did.

Senator SHELBY. Ms. Sherburne, did you raise the issue in a little conference with Mr. Kendall and the other gentleman about protecting the integrity of these records; in other words, what should be the proper procedure to copy these records because when you copy records, other people handle them, do they not?

Ms. SHERBURNE. That's correct.

Senator SHELBY. When you handle them, you handle them with your hands and different people handle them and there are different prints on them; correct?

Ms. SHERBURNE. Yes.

Senator SHELBY. Was that your first thought when you said I'll raise the issue of protecting the integrity of the records?

Ms. SHERBURNE. I believe what I realized when we were sitting there looking through these records that I thought that before we proceeded much farther, we ought at least to vet the question, should we continue to handle these records, should they be produced immediately, should—

Senator SHELBY. Who did you vet or discuss this with besides Mr. Kendall?

Ms. SHERBURNE. And Mr. Schuelke.

Senator SHELBY. Mr. Schuelke was Ms. Huber's attorney—

Ms. SHERBURNE. That's correct.

Senator SHELBY. —that had been called in. But no one else, just the three of you?

Ms. SHERBURNE. That's correct.

Senator SHELBY. What did Mr. Kendall say to you when you raised the question of protecting the integrity of the records; in other words, make sure if there were fingerprints on there, and obviously or more than likely there was somebody's fingerprints that the Independent Counsel or the FBI, whoever did it, had a chance to lift these fingerprints to see who had handled these records?

Ms. SHERBURNE. I don't remember exactly who said what. I know we talked about the issue and—

Senator SHELBY. But you were the one who raised the issue?

Ms. SHERBURNE. Yes, sir.

Senator SHELBY. You raised the issue?

Ms. SHERBURNE. Yes, I did. I'm not sure that I—I don't believe I used the words "protecting the integrity." I think I just talked about whether we ought to proceed to handle these documents given that there may be some investigative interest at some point.

Senator SHELBY. Can I just refresh an answer. This is February 6, 1996. Your testimony on deposition. You said, "Well, I"—

Senator SARBANES. What page is this, Senator?

Senator SHELBY. This is on pages 15 to 20. It's on page 18. You want to look at your record? You go ahead with your Counsel. Do you want me to go ahead, Ms. Sherburne? Maybe you can follow me here.

Question: You mentioned there was discussion of doing something prior to copying the records. Do you recall precisely what that something would be?

Answer: Well, I asked the question whether these records were records that there may be some interest in fingerprinting at some point, and should we, you know, reserve on copying or handling them. And that was the question that we discussed and then decided that the competing demands for these documents, as well as the obligation to the clients to analyze them, were compelling and we ought to get them copied . . .

They were compelling to you—

Ms. SHERBURNE. "Copied promptly and turn them over as quickly as possible to the Independent Counsel."

Senator SHELBY. But again, did you think about calling Mr. Starr or someone else who was trying to find these records to protect the integrity of them in the ongoing investigation?

Ms. SHERBURNE. No.

Senator SHELBY. You raised the question, but were you talked out of it by Mr. Kendall and the other—

Ms. SHERBURNE. Oh, no, no. We discussed it. I think we all—

Senator SHELBY. You discussed it. You brought up the question, which was a good question, protecting the integrity of these records for possible fingerprints. Obviously, they talked you out of it. What was said?

Ms. SHERBURNE. I don't remember using the words "protecting the integrity" unless you found them somewhere in my deposition. But I raised the question. I said let's discuss this before we proceed, and the three of us proceeded to discuss it. I listened to what the two of them said. I contributed to the conversation. I knew Mr. Schuelke to be a former prosecutor. I knew that he had been retained by the Senate for an ethics inquiry. I knew he was someone who had sufficient—extensive experience. So did Mr. Kendall. I

thought that the three of us by talking about it together could examine the various arguments for proceeding or not proceeding, which is what we did.

Senator SHELBY. Did you think about or did Mr. Kendall—I'll ask both of you—did you think about calling Mr. Starr, the Independent Counsel, on such a discovery and say look, we've got something here that you've been after. We don't want to touch it because we could destroy some evidence, perhaps? Did you think about calling him and if you did, why did you dismiss it? Was it competing interests, your own? Mr. Kendall?

Mr. KENDALL. Well, Senator Shelby, I did not regard this as a forensic matter. It was clear we were going to talk to the Independent Counsel. We also had an obligation—

Senator SHELBY. Excuse me a second, if you could. You didn't regard this as a forensic matter, yet this was under subpoena and was long sought after for many months. Were you the only one that didn't regard this as a forensic matter as an important matter, as a possible link? Go ahead.

Mr. KENDALL. I think we were jointly of the view that this was not a forensic matter. I think, as I said earlier, these billing records are quite helpful. They are not a smoking gun kind of evidence.

Senator SHELBY. That's not the question, sir.

Mr. KENDALL. Well, it goes into my mind—

Senator SHELBY. Did you help contaminate this evidence by copying and going through the copying process and going through many hands when the best thing to have done was to call the Independent Counsel and say look, we've got some records here you need, we're not going to touch them, let you come and see—make us copies. Wouldn't that have been a better approach?

Mr. KENDALL. No, it would not have been, Senator Shelby.

Senator SHELBY. Why?

Mr. KENDALL. Because we had a number of competing obligations—let me finish my answer.

Senator SHELBY. Let me ask this first. Your conflicting obligation was representing your client in this case rather than trying to let the Independent Counsel do their work with untainted evidence?

Mr. KENDALL. Well, my responsibility was to represent my clients within the bounds of the law. I think that I discharged that responsibility here. We had to examine the documents. We had to get them copied for other agencies. When I said a moment ago that the documents were helpful, that really was an important consideration and whether this was a forensic matter.

We had been looking for these documents. We're happy to have found them, and believed that they would be helpful when we released them. And as I say, properly understood, they are helpful. These were not something that people would have taken any pains to hide. Moreover, it was, we thought that we could get from Ms. Huber, when she was examined by her lawyer, a chain of custody which would explain their appearance.

Senator SHELBY. Ms. Sherburne, my time is up, but why did you raise the possibility of not copying these documents unless you thought it would contaminate them if they were copied and handled by other people?

Ms. SHERBURNE. I raised the question because I recognized that these documents and that this whole event was one that would be of significant investigative interest. I fully expected that we would be here talking about our conduct, and I wanted to make sure that we had reviewed all possibilities and were conducting ourselves with our eyes open and making good judgments that we had discussed with one another carefully before we proceeded. I thought that the consideration of the handling of these documents was one that we ought to talk about before we proceeded, and we did.

Senator SHELBY. But the term "competing interest" was used, I believe, by you—competing demands for these documents?

Ms. SHERBURNE. That's correct.

Senator SHELBY. Demands by the Independent Counsel who was doing his work and demands by Mr. Kendall and others——

Ms. SHERBURNE. Oh, no, sir.

Senator SHELBY. What were you referring to?

Ms. SHERBURNE. Competing demands would have been the subpoena from this Committee. That's what I meant by that. We had subpoenas from a number of different entities, and which one were we going to choose? Was it the Independent Counsel? Was it this Committee? How did we resolve that and how did we protect ourselves from a judgment by this Committee that somehow we had failed in our obligations to this Committee? That was certainly foremost in my mind having worked months and months and months to cooperate with the requests of this Committee. That was the competing demand.

I also recognized the obligation that Mr. Kendall principally had to his clients to review these records carefully as well. But the competing demands that I was thinking about were the expectations and the obligations that we had to this Committee.

Senator SHELBY. But you realize that the Independent Counsel has copying machines just like you do at the White House. They had the capacity to copy?

Ms. SHERBURNE. Presumably they do.

Senator SHELBY. Mr. Chairman, I know my time is up but just for the witness, I want to go back over this one question, at least her answer to it.

The CHAIRMAN. And I will see, as we did previously, that we will give to the——

Senator SHELBY. I will be short.

The CHAIRMAN. —Minority the additional time.

Senator SHELBY. You were asked:

Question: Ms. Sherburne, you mentioned there was a discussion of doing something prior to copying the records. Do you recall precisely what that something would be?

Answer: Well, I asked the question whether these records were records that there may be some interest in fingerprinting at some point, and should we, you know, reserve on copying or handling them. And that was the question that we discussed and then decided that the competing demands for these documents, as well as the obligation to the clients to analyze them, were compelling and we ought to get them copied.

Ms. SHERBURNE. You don't like to add that last part, "copied promptly and turn them over as quickly as possible to the Independent Counsel."

Senator SHELBY. That's right. Well, that was in there, too, "and turn them over to the Independent Counsel."

Senator SARBANES. It got left out the last time as well.

Senator SHELBY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SIMON. Yes. If I may—

The CHAIRMAN. I just want to make note of this, we will add four additional minutes to—the last time we went over, we added additional time, just so that my colleagues know we're not looking to infringe but looking to complete areas if we possibly can.

Yes, Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Mr. Chairman, if I may make a few general observations before I ask a few questions here. I have said two or three times on the Floor of the Senate that one of the changes in my 22 years here is that we have become increasingly and excessively partisan, and I have made clear that both political parties share the responsibility for that. I think it has not served either party well. I don't think it has served the country well.

I cast one of three votes against creating this Select Committee, the other two were Senator John Glenn and Senator Jeff Binghanton, neither of whom is regarded, I think, by anyone as excessively partisan. My concern was that this thing is going to be spilling over into politics, that we created the Office of the Independent Counsel so that we could remove this kind of thing from the political arena. I think I can safely assure these two witnesses—I say this on the basis not from any assurance or discussion with anyone else in the Committee, I can assure these two witnesses and all the other witnesses that after November 5th of this year, they will not be asked to testify before this Committee or any committee about this once we have elected a President.

First, I am concerned about taking a huge amount of time on these matters, and I know in this morning's Congressional Daily, Mr. Chairman, the heading is "Confirmation Hearings Backed Up in Senate Bank Panel," suggesting the Banking Committee isn't doing some of the things it should be doing because of these hearings. I don't know whether that story is accurate or not accurate. Mr. Chairman, you know much more about that than I do.

Second, I want to have a word of commendation for those reporters out there. I'm a journalist by background. They deserve medals. They have to strain to get stories out of minutia. The lead sentence almost every day ought to be "Another Dull Nonproductive Day Took Place Today in the Whitewater Hearings," but obviously the editors would not like hearing that lead story day after day, so something else has to be done.

Third, we've talked about the cost to the U.S. Government now in excess of \$30 million between the Special Counsel and our Committees. Those aren't the only costs. I see today eight lawyers sitting behind the two witnesses. They look to me like they're more than \$25-an-hour lawyers. We're hauling in secretaries, people who are just frightened by appearing before a Senate Committee and on television and everything, and I think we have to ask ourselves what is the purpose of all of this, and if the purpose is to simply

gain some political ground, then I think we have done a disservice to the process.

And let me refer again back to the stories, and tell people who are reading these stories that if they really want interesting reading, I suggest they read Al D'Amato's autobiography—

The CHAIRMAN. It's a good one.

[Laughter.]

Senator SIMON. It is excellent reading and I recommend it.

The CHAIRMAN. I get no royalties. They all go to my high school.

Senator SIMON. I'd even mention the name of it, but I forget.

The CHAIRMAN. Power, Pasta & Politics.

Senator SIMON. The Chairman did not ask me to ask him, I want you to know.

Let me ask this, because I think it's very pertinent of the two witnesses. First of all, by way of background, the fingerprinting and so forth becomes less important when you realize there is nothing in those documents that does not confirm what has already been said. So there's nothing sensational there. But I think there is one key question, and that is, when you finish copying—this was at 10 or roughly 10—you first found out, Mr. Kendall about 12:45 p.m. on January 4th?

Mr. KENDALL. That's correct.

Senator SIMON. Did either of you, Mr. Kendall or Ms. Sherburne, have any conversation with the President or Mrs. Clinton in which either suggested that there should be any delay in notifying this Committee, Special Counsel, and the others about providing the information to them?

Mr. KENDALL. Senator Simon, without getting into the content of any communications, I did not speak to the President between 12:45 Friday and the time the documents were turned over. I did not speak with Mrs. Clinton at all on that Thursday, January 4th. I did have a conversation with her that morning very shortly before the documents were turned over.

Senator SIMON. And without asking you to violate your lawyer-client privilege, did Mrs. Clinton suggest to you that there should be a delay in turning those documents over?

Mr. KENDALL. Senator, I can say that the documents were turned over very speedily after that conversation, and that she has herself expressed in her various news interviews that that was the right thing to do.

Senator SIMON. Ms. Sherburne, was there any communication to you by either the President or Mrs. Clinton suggesting that there should be a delay, or any emissary of either of them?

Ms. SHERBURNE. Absolutely not.

Senator SIMON. I have no further questions, Mr. Chairman. I turn the balance of my time over to our Counsel.

Mr. BEN-VENISTE. Thank you, Senator Simon.

Let me pursue two areas that were raised, the first of which is the issue of competing demands, so that we have with clarity what you meant by that, Ms. Sherburne. I understood your testimony to mean that you understood that this Committee, the House Banking Committee, the RTC, and the Independent Counsel had all made either requests or issued subpoenas which would have covered all or part of these records; is that correct?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. And whether or not this Committee issued a subpoena that would have covered these records—I don't believe we did or that our subpoena could fairly be interpreted to cover it—nonwithstanding that, there was no question that you knew that the Committee was interested in the material and that you were going to get it to us as soon as possible?

Ms. SHERBURNE. That's right.

Mr. BEN-VENISTE. If the only copy had been sent over to the Independent Counsel, which was running a Grand Jury investigation, pursuant to a subpoena of Independent Counsel, then this Committee would have been deprived of that evidence unless Independent Counsel had changed its previous position that material obtained by it through the Grand Jury process of subpoena would not be disseminated to this Committee. Is that fair to say?

Ms. SHERBURNE. That's fair to say.

Mr. BEN-VENISTE. Mr. Kendall, would that have been your understanding?

Mr. KENDALL. It would.

Mr. BEN-VENISTE. So that in the event that has been suggested here, the original was turned over to Independent Counsel, then you would not have had the opportunity to continue to refer to the document in response to questions about it in preparation of your clients with a document, nor would this Committee have had access to it unless the Independent Counsel changed its previously stated position with respect to providing us with material obtained by the Grand Jury?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. And that's what you were referring to as competing requests, including now the House Banking Committee, the RTC, and whoever else—whatever other three-letter agencies may have been asking for this material along the way.

Let me go to the question that you raise by your answer that you did not regard this as forensic material. Clearly, if a crime had been committed, if there had been a stabbing and a knife had been found, you would know enough not to touch the knife that was found because fingerprints contained thereon might well be important forensically to any police or investigative agency of the Government. Is that so?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. You did not, I take it, regard the discovery of these billing records as finding the missing knife in the O.J. case?

Mr. KENDALL. Quite the contrary, Mr. Ben-Veniste. As I indicated earlier, I thought they were helpful. We had been seeking them, and I thought they would be very useful to us. In any large document production, all lawyers know this but I think it's important to say it, you do your best to get all the documents the first time through. You try and plan a thorough search. But human beings, being what they are, and human fallibility being what it is, very frequently documents pop up late, and when they do, you produce them. It's happened many times in this case. It happens in all cases where there are a large group of documents to review and complicated document requests, so we had many times before

other documents emerge and when they did, we turned them over to the proper authorities.

Mr. BEN-VENISTE. Such as late last evening, the Gearan notes. Now the Gearan notes were under subpoena. There have been requests made for those notes. I take it, Ms. Sherburne, you're not concerned with handling the Gearan notes so that somebody's fingerprints would appear on them?

Ms. SHERBURNE. No, I wasn't.

Mr. BEN-VENISTE. How many pages of documents have been produced pursuant to subpoena, Mr. Kendall?

Mr. KENDALL. We have now produced to this Committee almost 30,000 pages of documents.

Ms. SHERBURNE. I believe the White House in response from August 25th forward has produced—I think it's around 14,000 pages.

Senator SARBANES. Isn't it a fact that every time documents have been found which had not previously been produced, they have then been immediately or promptly sent forward to the requesting agencies?

Ms. SHERBURNE. Yes.

Mr. KENDALL. Yes.

Mr. BEN-VENISTE. Therefore, in a document discovery matter, where we have received 50,000 pages of documents from you, not to mention hundreds of thousands of pages of documents from other agencies over the time this Committee has been in existence, the notion that because a document has been subpoenaed, that it has some special quality that involves fingerprints and who handled it absent any indication of a crime would, I take it, Mr. Kendall, not occur to you as being an important consideration?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. I see my time is up, Mr. Chairman.

The CHAIRMAN. Let me make an observation before I recognize Senator Faircloth that we're not talking about just any document. We're talking about one that brought to the White House yourself, Mr. Kendall, Mr. Schuelke, and that you had an extended conversation that went into the evening until about 10 p.m. in terms of working on it and preparing documents.

The question wasn't a naive one put forth by Ms. Sherburne. She is an experienced attorney and she has done a heck of a job. We may have conflicts at times, but she represents her client in a point of view and perspective, and does it with great ability. She didn't just dream this up about the importance—or at least considering the question of whether or not copies should be made at that point in time or whether preserving the integrity of the document as it related to fingerprints that may or may not have been present that could have because she knew this would be the subject of how did these documents turn up in the manner in which they did and the place in which they did. She knew it. That's not unreasonable. She's been down this road, and she knew if any questions were going to be raised, they would and could.

And it is not unreasonable for Senator Shelby or anyone else to say how is it, why is it that there were not precautions taken such as notifying the Independent Counsel or calling the FBI and saying we are desirous of seeing to it that these documents are made available, copies to the appropriate parties, all the parties con-

cerned, and that we want a copy also for ourselves but we want to preserve the integrity of them as it relates to the fact that there would be no contamination.

I think her question was absolutely on point and appropriate; and I'm sorry that a decision was not made to see to it that there was a minimum of handling, that the copies could have been made appropriately, that the parties, all of their interests could have been protected, and it seems to me that could have and should have been done. Ms. Sherburne was absolutely correct in raising that as an issue and it is an issue and it has turned out to be one, so I commend her for doing it.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Just to elaborate very, very briefly on what you were saying. Mr. Ben-Veniste said—to some degree—that if you were investigating a murder and found the knife, that he would immediately not touch it and preserve it for fingerprints. Well, if ever there was a paper switch blade in investigating a case, these documents were the paper switch blade. They were the paper knife and glaringly evident to anybody involved that had been searched and subpoenaed for 2 years by two or more agencies. I would have thought that would have been recognized as very, very vital and very sensitive information and documents; and that they would not have been touched until they had been turned over to the Independent Counsel. But anyway, another decision was made.

Another thought I have, and Ms. Sherburne and Mr. Kendall, I realize the complexity of getting, and certainly from hearing your testimony, documents from the White House and the many, many people involved and the problems of getting them. That be as it is, we're 21 days from the time that this Committee was supposed to have finished its work. We are still getting very, very vital and revealing documents often. So all I have to say is that I think it is ludicrous to expect us to finish by the appointed time, and I can't imagine anyone, Minority or Majority, objecting to extending the life of this Committee indefinitely until we have completed our work. Now the zigs and zags of why we are still here there is no need to debate, but I want to make the statement that I think the Committee needs to be extended and should be extended indefinitely until we have finished our work.

The CHAIRMAN. Thank you, Senator.

Senator FAIRCLOTH. Wait a minute.

The CHAIRMAN. OK. I didn't mean to cut the Senator off, nor would ever attempt to do that.

Senator FAIRCLOTH. Ms. Sherburne, your deposition suggests that Ms. Huber may be or may have been confused about when she found these documents, but I was here during her entire testimony, and I found her quite credible and very exacting in her memory.

My comment is this: There's been no suggestion that Ms. Huber is in any way confused. I understand she ran the Rose Law Firm with an iron fist. That was the description we had and further, if she was incompetent in any manner or even lacking in any degree of high confidence, the First Lady and President wouldn't have

hired her to handle bills and very personal correspondence. Do you in any way feel that she might be incompetent or confused?

Ms. SHERBURNE. Well, Senator, I certainly thought she was confused that night. I heard her testimony as well when she testified before this Committee and recognized that her description of the events had become much more precise. That doesn't change the fact that on the night of the 4th of January when she was describing this, that she was very confused and that her recollections were very imprecise.

Senator FAIRCLOTH. Let me ask you another question, then. You have described, Mr. Kendall—and I believe you, too, Ms. Sherburne—and I am not asking for what she said, but you described in detail Ms. Huber's reactions and mannerism and frustration when she found the documents or discovered them. Would you mind telling me, what was the reaction of the President and the First Lady when they were told the documents had been found? Not what they said. I am not trying to get into your privilege, but what was their response?

Mr. KENDALL. That's privileged, Senator.

The CHAIRMAN. Wait. Let me say this to my friend and colleague, and I have not advised you about this, and that's why we delayed the hearing so that we would not even have a question as to what is privileged, et cetera, so Mr. Kendall would not even have to raise it. We agreed as it related to any conversation, et cetera, covering that, that we are reserving their right. We are not raising it at this hearing today. I would ask the Senator to withhold that particular—you were not aware of that and I did agree so we could proceed and I must say that Mr. Kendall and Ms. Sherburne then agreed to be responsive to some of our questions as it related to the manner in which their clients were advised when the subpoenas were served and so we had a trade-off so we could move the hearings.

Senator FAIRCLOTH. All right. I wasn't asking for statements anyway, but I didn't realize we had done that, and that's fine.

The CHAIRMAN. I'm sorry and I apologize to the Senator for not having advised him about that.

Senator FAIRCLOTH. Mr. Kendall or Ms. Sherburne, we have new documents here today that indicate the following, that on January 5th, Harold Ickes wants to send people to Arkansas to further talk to Beverly Bassett Schaffer because it is important in his words. Do either of you know if White House staffers or others on behalf of the White House went to visit with Ms. Schaffer in Arkansas in the January 1994 time period, or thereafter, as a result of what Mr. Ickes said? Did somebody go to visit with Ms. Schaffer?

Ms. SHERBURNE. Not that I'm aware of, Senator.

Mr. KENDALL. I don't know, Senator.

Senator FAIRCLOTH. Mr. Kendall, did you help prepare the answers that Mrs. Clinton gave to the RTC and to Pillsbury Madison & Sutro?

Mr. KENDALL. The interrogatory answers, Senator?

Senator FAIRCLOTH. Excuse me?

Mr. KENDALL. The answers to the RTC interrogatories?

Senator FAIRCLOTH. Yes.

Mr. KENDALL. Yes. Without getting into specifically what I did, I assisted in the preparation of those answers.

Senator FAIRCLOTH. Do you think there's any possibility that the First Lady misled investigators when she said she did no work on Castle Grande?

Mr. KENDALL. I don't think that's what the answers were, Senator. If you would put them in front of me, I would be happy to see them, but her answers were perfectly accurate in those interrogatories.

Senator FAIRCLOTH. She seems to be the only one that thought that IDC and Castle Grande were different. When the First Lady gave—

Ms. SHERBURNE. Senator, I believe there was testimony from some of her partners that they as well believed they were the same, as well as Mr. Fitzhugh, that they referred to the development as IDC.

Senator FAIRCLOTH. Well, I don't remember that testimony, but we have had a predominance of testimony here that everybody thought it was the same, and nobody was confused that it was—

Mr. KENDALL. The Rose billing firm, though, Senator—the Rose billing system—in fairness, the Rose Law Firm always considered this matter to be IDC as the various Rose people have testified.

Senator FAIRCLOTH. You find no coincidence against these billing records that show she did work on Castle Grande, but Castle Grande was the one transaction that the RTC thought a lawsuit could be brought on—just a minute—and that the documents were found 4 days after the statute of limitations expired. Do you think this is coincidence?

Mr. KENDALL. Senator Faircloth, let me address that question. First of all, there's a tolling agreement with respect to any lawsuit the RTC wants to bring over the IDC proper.

Second, her work on the IDC proper was known long before these billing records were discovered. There was testimony in the House about it. When I told Ms. Huber that the billing records were going to be helpful, I really meant that. These records were not, to use your metaphor, a paper switch blade. They were records which showed—first of all, they just confirmed a lot of information out there, but they showed that the law firm's work was limited. They showed her work was limited, and they showed that the work was really not very much involved in the acquisition of the IDC project.

Senator FAIRCLOTH. Mr. Kendall, it's all in the eyes of the beholder what is limited and what is not very much, but the one hook that the RTC could have gone after in a lawsuit would have been Mrs. Clinton's work on Castle Grande. So let me ask you—

Mr. KENDALL. Senator, what I meant to say is they can still do that. That's what the tolling agreement means.

Senator FAIRCLOTH. She is willing to grant them a waiver of the extension of the statute of limitations?

Mr. KENDALL. The Rose Law Firm has already granted it.

Senator FAIRCLOTH. Would that include Mrs. Clinton?

Mr. KENDALL. I think that would be a question of law, but she was certainly in the law firm at the time and would be one of the people who had worked on the matter.

Senator FAIRCLOTH. The Rose Law Firm has granted an extension. Would Mrs. Clinton agree to the extension as an individual?

Mr. KENDALL. I think she was then a member of the Rose Law Firm. She was never asked for such an extension, but she is bound up in the work she did for the law firm.

Senator FAIRCLOTH. Mr. Chairman, I thank you.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Kendall, perhaps you ought to explain what a tolling agreement is. Again, for nonlawyers, this is not toll-house cookies or—

Mr. KENDALL. Or toll booths across the bridge. A tolling agreement simply suspends for a period of time the running of the statute of limitations. In other words, if an action can be brought in 3 years, and the time is ticking away, the parties may for a variety of reasons seek an extension by mutual consent, and so that's what a tolling agreement is.

Mr. BEN-VENISTE. So in point of fact with respect to the question posed by Senator Faircloth, the Rose Law Firm has entered into an agreement with the RTC and its successor, the FDIC, I trust, to extend the period of time where the FDIC, the Government can now pursue any claim it thinks it may have against the Rose Law Firm irrespective of the time the statute of limitations would normally have run out?

Mr. KENDALL. That's correct, with respect to the IDC claims.

Mr. BEN-VENISTE. To add to the point with respect to how that transaction was characterized by Mrs. Clinton and her partners at the Rose Law Firm, we have now had testimony from Mr. Massey, Mr. Clark, Mr. Fitzhugh, Mr. Thrash, Mr. Donovan, and Mr. Dover. So six different witnesses have appeared here under oath and have testified that the matter was referred to as the IDC matter. In addition to that, when you review the billing records which have now been discovered and turned over in January, what do those billing records tell us about how that matter was described by the Rose Law Firm?

Mr. KENDALL. Matter No. 5, IDC.

Mr. BEN-VENISTE. It is not described in any way, shape or form, is it, as Castle Grande?

Mr. KENDALL. Castle Grande Estates is a trailer park which is part of the 1,050-acre development.

Mr. BEN-VENISTE. When you talk about the consideration of the substance of the material not being a matter of forensic interest, you said two things. First, you talked about documents being produced in a large document case and there being a continuing production of documents over a period of time. The second thing you talked about was the nature of the documents themselves. What did you mean by the nature of the documents being another consideration in connection with the forensic issue?

Mr. KENDALL. These billing records are helpful. They are not entirely new. A great deal was known about the Rose Law Firm's representation of Madison Guaranty before the discovery of these records. I have been amazed at the focus on the billing records. It seems to me to call it—"a tempest in a teapot," "no there there,"

"the Emperor's new clothes," you could choose your hackneyed metaphor, and it would apply to all of the hoopla over the billing records.

Before the records were discovered, it was known that the Rose Law Firm had in a 15-month period performed about \$21,000 worth of work over that period. It was known what projects it had worked on. Mrs. Clinton's participation was well known both because of testimony about it, and because of other documents and other billing records that were available. When I identified these billing records for Mr. Chertoff at the beginning of this hearing, I tried to indicate that I had seen some of these records before, as has the Committee. The House of Representatives released several of the bills that had gone to the Rose Law Firm. So the publicity over the billing records is, in my opinion, quite exaggerated because much of what is in here was known before.

Now there's some detail. They do provide attorney detail, but by and large, that is helpful because one of the questions having to do with the RTC's investigation is did the Rose Law Firm participate in any substantial way in the acquisition of the IDC property. From the billing records, you see that they really did not. You see that Mrs. Clinton had nothing whatsoever to do with the acquisition. You see that her work, such as it was, comes much later.

So that was why my initial reaction was that these records were helpful. I was not simply trying to hypocritically reassure Ms. Huber. I knew when these got out and were properly considered, quite—they would certainly not be a paper switch blade, but would be something that would be helpful, and as I said earlier, I wish they had been discovered earlier.

Mr. BEN-VENISTE. In connection with the confirmatory information that was contained in the billing records, I take it when you say they're helpful, you mean in connection with prior statements made by the Rose Law Firm and Mrs. Clinton?

Mr. KENDALL. That's correct, and also in limiting and defining the nature of the work done. I think the Rose Law Firm has been quite unfairly criticized. They were not the major outside counsel for Madison Guaranty. Their work was limited and it was defined. It involved specific projects, such as the stock offering, which, in fact, Ms. Beverly Bassett Schaffer held up in what I think was a really extraordinarily good display of regulatory courage and integrity. So Madison Guaranty did not get its stock deal approved.

Mr. BEN-VENISTE. And by that, you mean the fact that there was a requirement, despite the fact that she agreed that a State-chartered S&L could issue preferred stock, there was a prerequisite required of Madison to increase its capital prior to the time that any such preferred stock offering would be allowed?

Mr. KENDALL. That's correct. She required that their regulatory capital be up to the Federally-required limit, whereas—then there was an argument that went back and forth over the summer of 1985, the S&L's position was look, we need to raise stock to get our capital up. But she held tough, and the stock deal did not go through.

Mr. BEN-VENISTE. Now the records that you say are duplicative of what had already been—by January 5th, had already been pro-

duced to this Committee and elsewhere consist essentially of bills which were sent by the Rose Law Firm to Madison; is that correct?

Mr. KENDALL. That's correct, and that identifies the attorneys, so you knew H. R. Clinton worked on Matter No. 5, IDC, but it did not list the specific tasks, so the billing records are helpful in defining precisely what she did with regard to the IDC matter.

Mr. BEN-VENISTE. And all of this, in your view at the time that you discovered the records, putting aside whatever questions there may have been about where they had been prior to the time they were discovered, but the actual fact that the records were there, they could now be reviewed by all parties, they could be turned over immediately, and they were, in your view, largely confirmatory and corroborative of what your client had said about the underlying activities, all motivated you to get them copied, to get them disseminated immediately?

Mr. KENDALL. Mr. Ben-Veniste, it would not have mattered whether they had been favorable or unfavorable. I would have gotten them copied and disseminated. In fact, though, they are favorable, and I think again, when people understand what is in them, it will be recognized that this is, to choose a phrase, "a tempest in a teapot."

Senator SARBANES. Ms. Sherburne, with the exception of the E-mail requests from this Committee on which you're now working, in which you have made a special contractor arrangement, as I understand it, and you have now gone through the first time period and working on subsequent time periods, have all requests for material and information from this Committee been met?

Ms. SHERBURNE. Senator, last weekend, over the weekend, we received three or four new requests from the Committee.

Senator SARBANES. On the E-mails?

Ms. SHERBURNE. One was related to E-mails and another was related to additional records. We have complied as fully as we can in that short time period. I think one request we received Saturday night at 10 asked for a response date by noon on Monday. We didn't make it. There were other requests that came in; I think, there were 3, 4, or 5 different letters, and we partially responded to those. But apart from that, and the E-mail question, we believe that we have complied with the Committee's subpoena. Again, you know, Gearan documents can turn up.

Senator SARBANES. No, I understand that you may have had a request and provided material and then subsequently something else may turn up, an effort was made to get it and for one reason or another, it wasn't found, then it's found and it's provided, but that is always a possibility with respect to anything that has been requested. I wasn't aware of the other things. I thought only the E-mails were outstanding. These were requests that came to you from Mr. Giuffra, were they or do you know?

Ms. SHERBURNE. I think most of the requests were signed by the Chairman.

The CHAIRMAN. There will be requests that we continue to make if facts that we were unaware of become known to the Committee, and I think that's only reasonable. For example, we had no knowledge, at least the Chairman didn't, as it related to any possible relationship that the Southern Development Bank may or may not

have had, that the Bank of Kingston may or may not have had, various timesheets that we were told Mr. Hubbell removed. We just learned that yesterday for the first time, so there will be occasions, and we obviously can't hold the White House, nor do we attempt to do that, nor Ms. Sherburne responsible for producing documents that we've never requested, and obviously, it has to be realized that when we do get new information, that will take place.

Let me, before I call upon Senator Bennett, make an observation. As it relates to characterizing this as a tempest in a teapot, I cannot even begin to subscribe to that. This is the most incredible—to say that this Committee and others who want to attempt to get the facts should not find it incredulous, difficult, even if these were viewed in the best light, exculpatory billing records, and I don't accept that for 1 minute, not 1 iota because they are not, in my view, exculpatory, but demonstrate much more work and much more activity than has heretofore been known. And there's a question of the 15 hours. Was it overbilling or was it work not accounted for? The question of frequent numerous contacts with Seth Ward, who was the major participant in IDC and Castle Grande.

Having said that, that would totally negate a question as to how it related to these documents and find themselves in the personal residence of the President and the First Lady. The fact is we have to believe that they were there, they had them for an extended period of time because to this date, the last known person, and we have testimony yesterday for the first time that clearly establish that Mr. Hubbell saw them in the possession of Vince Foster.

We have, by your own admission, Mr. Kendall, Vince Foster's personal handwriting, not a copy, his personal handwriting on these documents. How did they get to the residence? When we look at the record, and it is incomplete, we're going to continue to examine other people, I think it's highly improbable that a construction worker brought these records in, and if he did, where did he bring them from.

But the fact is, when you look at the testimony of a young man who works for the White House, Mr. Castleton, and he says, that as he's carrying a box of documents, documents that were assembled from Mr. Foster's papers in his office at the behest of Maggie Williams, the First Lady's Chief of Staff. Ms. Williams says, "Well, we're bringing these upstairs so that the First Lady or the President can review them." We can check the exact quotation, but that's the sum and substance. How did the documents get there, then, that Mr. Foster was working on in his office—or certainly was working on, maybe at home? Did they come from his house? How did they get there?

Mr. KENDALL. Senator, may I respond?

The CHAIRMAN. No, I'm going to finish because I think when you say this is a tempest, you know——

Mr. KENDALL. In a teapot.

The CHAIRMAN. —in a teapot, it just—that's your analysis, and I listened to you. I didn't interrupt you, and I am going to finish. It is not a question, it is an observation on my part. I observe further that when Officer O'Neill testifies that he sees the First Lady's Chief of Staff taking papers, files out of Mr. Foster's office, bringing them into her own, and then thereafter, 2 or 3 days

later—that's undisputed—that they went upstairs with Ms. Huber and had documents—anyway. I think by any reasonable interpretation, you have to find that those papers were there or may not be; maybe there's a better explanation.

But when you put these things together, I think most reasonable people are going to conclude that certainly Mr. Foster was the last person to have them in his possession. Certainly, there was a change of plan in the manner in which a review of documents that he had in his office would be undertaken; and certainly, there is evidence that Ms. Thomases called Bernie Nussbaum, and we have people who testified that the First Lady wasn't happy about the manner in which this review was going to take place, and then guess what? It changed.

Now, I don't think this is a tempest in a teapot when we say that we have some very real concerns as to how these documents got there, and I'm not going to get into the business, and I have heard you and you have very articulately put forth why you believe these documents are exculpatory. That's fine. You have a right to your opinion. We are going to just try and gather the facts and indeed, if they are, let it be. Wonderful. We will make that determination. And I'll be the first to say that, if we get other evidence and other information that indicates nothing is there. If there's nothing there, that's fine, and I would like to close this down as soon as we possibly can, but I'm not going to close it down on the basis of incomplete information.

By the way, I want you to know, Ms. Sherburne, I do not in any way hold you responsible or anyone else in the White House responsible for production of the documents that we got last evening at the point in time they came. But the information in there certainly leads us to say we have much more work to do and following up the conversations that we have gleaned from the information that we have received.

So I just wanted to respond, as you had made your observations, Mr. Kendall, I make my observations.

Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Mr. Chairman, I think I will let it go over to the other side so I can have full time.

The CHAIRMAN. We are going 15 minutes, how many minutes—

The CLERK. About 8 minutes left.

Senator BENNETT. I can handle it in 8 minutes.

I just comment, Mr. Kendall, that if you find this discovery of documents useful to your client, I would really be interested in seeing some documents that you didn't think were useful to your client because from my standpoint, from my perception, the discovery of the billing records was quite damaging to previous testimony and previous positions that I heard, previous comments that I elicited from Mr. Hubbell and others on the issue of billing, and I am a little surprised, frankly, to hear you say that you find these would be useful.

Ms. Sherburne, just an observation as a layman, and I am not burdened with a legal education, so I can make these kind of comments. In my lifetime, I have been the subject of a subpoena, I

have been the subject of an IRS audit, and I have undergone a root canal, and I would tell you I would much prefer the root canal and I would much prefer the IRS audit to the receipt of a subpoena.

They are always broad. They just stun the layman like me when they say we have to have everything you have ever done in all your life and everybody you've ever talked to and then we'll talk about narrowing it later on when you get an attorney to come argue with us. That's the impact that a subpoena has on a layman.

I would suggest to you that upon receipt of that first request in August, as a layman I would have issued a general memo to everybody under my jurisdiction and said yeah, our lawyers are going to fight to try to get this narrowed, but in the meantime, the prudent thing to do would be to not throw anything away. And your failure to make any kind of notice to anybody until you had fought that fight about narrowing would suggest to me a suspicion that there was an attempt to drag this thing out as long as possible in the White House. This is not an unreasonable suspicion for some people to have.

And as an old PR man, I would suggest to you the next time you get a subpoena that's broad, yes, you did what you did, what every good defense attorney does for a client and say well, we can't comply with that, let's fight to narrow it, and you succeeded in doing that over about a 60-day period, but in the meantime, it might have been a good time for you to issue the memo to everybody that says don't throw anything away in the meantime, so that there's at least something on the record that makes it clear that you're trying to protect whatever has to be protected while you're doing the back-and-forth that lawyers do in an attempt to get to specificity. It's just gratuitous advice.

Ms. SHERBURNE. May I respond?

Senator BENNETT. Surely.

Ms. SHERBURNE. Senator, I have dealt with document requests and productions my entire professional life. And the normal course of proceeding is always to try and capture as much as possible and then begin the narrowing process.

I would like to remind you, Senator, that first of all, there's no indication anywhere that any record that was called for by the subpoena was tossed out in the intervening period; and I don't think you were suggesting that.

Senator BENNETT. No, that's not my point.

Ms. SHERBURNE. Second, I believe that the bulk of the responsive material had already been collected in response to other requests and subpoenas. And so we had that material already essentially captured in the Counsel's Office, and we began reviewing that material and providing that to the Committee promptly.

Senator BENNETT. Well, just my reaction to your exchange with Mr. Chertoff on his suggestion that you had not done what you should have done in August, and it took you until October, and of course, we are now coming up against the expiration of this Committee and the existence of this Committee. And clearly, we will not have 96 votes to extend the life of this Committee as we had in the creation of this Committee. I remind you of that a little, Mr. Kendall, when you talk about a tempest in a teapot. We are, in fact, operating under a mandate of 96 Members of the U.S. Senate

who told us to be here to do this, so it was not a partisan kind of circumstance in the beginning.

But we are coming up against a deadline. There are those who think the deadline has to be extended, those who would like to see the deadline not extended because they would like to see some things not come out and would, indeed, do whatever they could during the period of this existence to try to slow things down even though they ultimately do produce the documents.

I'm not going to accuse you of doing that, but I do have the suspicion that there are some people involved in this who would like to do that.

Ms. SHERBURNE. Senator, I would like to share a concern that I've had related to that, which is that the long period of time that it's taken for us to reach agreements with the Committee about what is a workable request has made me think quite the reverse; that, in fact, the Committee is interested in creating excuses and making it difficult for us to respond to requests so that you have an opportunity to argue that our compliance with these requests has not been sufficiently timely. It's been very difficult to work to reach agreements about what we can actually ask people for and produce to the Committee. It's been a very time-consuming process, and it's been something that we've worked hard to achieve.

But there are times, as early as September 6th, when the Committee indicated that because we said that we couldn't produce the documents within a few-day period from the August 25th request, that you may have to extend the life of the Committee. As early as September 6th, you were saying that.

Senator BENNETT. The light is going on. That is why I apologize for trying to cut you off.

Ms. SHERBURNE. I don't mean to take up your time.

Senator BENNETT. I will simply say that if that is the strategy of the Committee, it has not been shared with this Senator. I am completely unaware of any desire on the part of any staffer or Senator to deliberately extend the life of the Committee. The point I would make of the documents we got today, and these notes just came up. We got them yesterday. We frankly were not prepared to talk about them at this hearing today because they caught us by such surprise.

It is very clear to me, Mr. Chairman, going through these pages that we've gotten of Mr. Gearan's notes, that we're going to have to have Mr. Ickes here. He is very clearly a key player in the damage control efforts that are going on with respect to this issue, and I will just tell you how I read these.

I understand you weren't part of this meeting, but I read these as to those parts that have come through the redaction and available to us that particularly point number 5 on the first page, PB, whoever that is, Paul Begala, BL, whoever that is, Bruce Lindsey, I'm guessing—and we now know his first name from Ms. Sherburne, Mike Waldman, are all going to go to Arkansas to meet with Beverly Bassett and try to poke holes in their story, whoever "they" happens to be, and they're going to try to get independent validation of their effort to poke holes in their story from a securities attorney, unnamed, and a search of all regulations.

This is clearly a carefully constructed plan of something to do, and then you go to the second page, and HI enters, and you have identified him, Ms. Sherburne, as Harold Ickes, obviously disagreeing with this strategy. That's the way I read it. That's why I say we have to get Mr. Ickes here, so he can describe to us exactly what happens.

He says the boxes are going to a prosecutorial authority anyway. He's concerned about meetings of attorneys outside of the White House. Beverly Bassett is so fouled up or whatever, that if we foul this up, we're done, let's not talk it to death. Let's get it done. In other words, he says—you go to the next page—we can't send these three people down to see Beverly Bassett because it will get out. And we will be done.

That is the way I read the sequence of things. Instead, Harold Ickes is saying let's go down this item by item to make sure her story is OK.

Ms. SHERBURNE. Senator, I think—

Senator BENNETT. I find this, Mr. Kendall, more than a tempest in a teapot when the Deputy Chief of Staff to the President is sitting in a meeting—this is the way I read these notes—and overruling a previous decision that is outlined in 1, 2, 3, 4, 5 fashion on the first page and saying we can't do this and if we mess this up, we are done, and this is what we are going to have to do.

I think these are things that are perfectly appropriate for this Committee to pursue and the fact that we get this note yesterday—and I do not accuse anybody of deliberately hiding it—the fact is we get this note yesterday, and this is something that I think we should appropriately pursue. I think the Committee has a mandate to pursue it, and we need to extend the existence of the Committee so we can pursue it. I think we need to get Mr. Ickes up here to tell me that my interpretation is completely false and tell us what really happened. But this is something that we can't say, "Oh, there's no there there," and we just have to ignore it.

If you would like to respond, I am very generous now that my time is gone. I'll be happy to—

Ms. SHERBURNE. As you read through the notes, I think you said at one portion that it read that Beverly Bassett is messing up. I think it's Beverly Bassett is important is how I read the notes, and I think that's an important distinction—

Senator BENNETT. I think it's important for us to get somebody here who really knows what it says, tell us what it says. I don't know for sure and you don't know for sure.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Ms. Sherburne, when did you receive a subpoena from this Committee?

Ms. SHERBURNE. October 31, 1995.

Senator SARBANES. I think it's very important because Senator Bennett is making reference to a subpoena in August, and August is a document request.

Senator BENNETT. I stand corrected.

Senator SARBANES. We did not join in that document request because we felt at the time that it was overly broad and, in fact, would inhibit the efforts of this Committee to move its inquiry

along. At the time we indicated in a memo to the Majority staff when this very broad request was before us, and I think it's important to get some of this background because it's more complex than it appears and there's been a consistent effort to, in effect, throw it all on Ms. Sherburne. And I think, frankly, that's unfair to her. I think this is a difficult task under the best of circumstances.

We said at the time, "We foresee potential problems that could arise from this approach," and the approach I'm making reference to is just these overly broad and sweeping requests. "Most important is a simple matter of timing, requests of this breadth may substantially slow down the responses of the White House and Mr. Kendall, Clinton's personal counsel, to this round of document requests." We went on to say, "We believe it would be prudent to prioritize the Special Committee's document requests and correlate them to reasonable deposition schedule."

Now, I think our concerns were well-founded. What happened actually is the Majority's document requests to the White House were onerous and ever-expanding, and a lot of time was spent between August 25th and the latter part of October trying to clarify these extraordinarily broad document requests. Actually, rather than clarifying them, the process seemed to add confusion, as a matter of fact. And only 10 days after the original document request, White House attorneys met with Committee staff to discuss compliance with that broad document request, the one that I thought was overly broad as I indicated.

The next day the Committee's Chief Counsel sent a letter to the White House which began as follows: "You have advised us that the White House will not be able to produce documents by the September 7, 1995 return date specified in the Committee's August 25th request." Now keep in mind this was an extremely broad request. There's no person on earth who could have come anywhere close to complying with it by the September 7 return date. Further quoting, "as we discussed, any delay by the White House in producing documents will impact negatively on the Special Committee's ability to conclude its investigation by February 1996."

This was on September 6th that this observation was being made, and this letter included the requests that I made reference to earlier. And I want to put that back on the record, because I think it's a dramatic illustration of the problem that Ms. Sherburne was being confronted with in this process.

It included, amongst other things, expanding the already very broad request, any communication, contact or meeting between January 20, 1993 and August 5, 1994, a period of almost 19 months, relating to any subject, any communication relating to any subject between the Clintons, President Clinton, Mrs. Clinton, or any present or former member of the White House staff, and then a paragraph that lists approximately 50 people, including—and I don't know what number to give to this category—any present or former employee of the RTC. So it's any communication over 19 months on any subject between all former and present White House staff and paragraph 2.

Now, I mean, in the subsequent analysis and discussions, I have to concede the Majority staff, I think, recognized the extraordinary breadth of that request and that matter was narrowed down. But

it is clear that Ms. Sherburne was being confronted with these sweeping requests in terms of trying to address this matter. Finally by mid-October, a narrowing took place; is that correct, as I understand it, about that period of time?

Ms. SHERBURNE. I think that was, the final request was arrived at. There were lots of discussions in between.

Senator SARBANES. A subpoena was then issued toward the end of October, if I'm correct.

Ms. SHERBURNE. That's correct.

Senator SARBANES. In fact, when we were first confronted with that question, if the Chairman will recall, we had a discussion and a difference in the Committee about the original breadth of that subpoena as it was being proposed. A decision on it was deferred, discussions were held amongst the Members of the Committee, the staff, and Ms. Sherburne. In the end it was focused, in my judgment appropriately so, and in fact, we then joined in that request, the Minority joined with the Majority at that time in that request.

Now subsequent to that, I think we've been able to move this matter along. We've had the E-mail situation which was addressed earlier, which is now moving along as well. There we had the problem of—the difficulty of retrieval, the cost of retrieval and we've worked through that. So the response to the E-mail request is now taking place. My understanding is that all the matters that were contained in the subpoena have been provided, allowing for things that have been overlooked or just discovered. I mean, as we have indicated, we understand that that may happen.

In fact, Ms. Sherburne wrote a letter on October 23, I think.

Ms. SHERBURNE. Right. The review of the bidding letter?

Senator SARBANES. This is a letter from you, Ms. Sherburne to Mr. Giuffra, Chief Counsel of the Committee. Let's review the bidding letter, which says:

As far as we are aware, the White House has nearly completed its response to the Chairman's August 25, 1995 document request, and your subsequent expansions of his original request. Our compliance does not include certain material about which there had been outstanding cut-off date issues that were only resolved in your letter of October 17, 1995 or the new requests made in your October 17 letter. Although your October 17 letter raises new issues that require further discussion, we anticipate we will have essentially completed our response to it by October 30. To date, we've produced nearly 8,500 pages of White House records to the Committee.

Then you note that it's been very difficult to move this process forward because you have encountered a "confusing labyrinth of embellishments, qualifications, and elaborations." Which I take it refers to the back-and-forth in the intervening period subsequent to August 25, or perhaps subsequent to September 8, was this the first letter of elaboration that came to you from Mr. Giuffra?

Ms. SHERBURNE. That was on September 6th, that's right.

Senator SARBANES. That's the first elaboration?

Ms. SHERBURNE. That's right.

Senator SARBANES. That was the one that contained this. It contained many other things, but amongst other things, contained this extraordinarily broad request which I just quoted?

Ms. SHERBURNE. That's correct.

Senator SARBANES. Now what transpired then in the intervening period, further efforts to try to refine the requests? It seems to me

you just had these overwhelming requests. Was there some effort to prioritize the requests so you had some sense of——

Ms. SHERBURNE. We sought guidance from the Committee staff about priorities, believing that it was likely that the Committee would proceed with the Washington issues before the Arkansas issues, and sought guidance from the Committee that we could emphasize first retrieving the documents that we thought the Committee would need first. And in the early part of September, the Committee staff was unwilling to set those priorities.

As we proceeded into September and in early October, the Committee staff encouraged us to focus on the first five paragraphs of the August 25th letter, which related to the Washington issues. So that's what we did. We provided all those documents, I believe in time for the hearings on the Washington phase issues.

At that point we were also continuing to negotiate and discuss with the Committee staff how to narrow and focus and make manageable the requests for the so-called Arkansas phase documents. There were discussions, numerous phone conferences, and meetings. There was a letter from Mr. Giuffra on September 25th that elaborated further. There was a letter from David Fein of my staff back to Mr. Giuffra, verifying further clarifications that we had achieved on October 15th, and then finally Mr. Giuffra's letter on October 17th.

Senator SARBANES. Mr. Chairman, I want to make the observation that when the subpoenas were finally issued on October 26th, the Minority joined in issuing the subpoenas, but at that point there had been, what I thought, a process that should have been taken place earlier, which were very serious discussions about the breadth and scope of the request. In fact, there was, as it finally turned out, extended discussion between Committee staff and White House attorneys.

Those negotiations resolved several important issues that had previously hindered the production of documents, and the clarification that came from that, the definition of time periods, a limitation on the people affected, the proper narrowing of the subject matter to be covered and so forth, that then gave us, I think really for the first time, a workable request for Ms. Sherburne and her colleagues to respond to. And of course, they have been trying to do that ever since. I think in the meantime, they were responding even though they were dealing with an unworkable request. I mean, they were still trying to send documents and materials to the Committee. I think it's very important to have this record. And actually I think the October 23rd letter ought to be included in the record, and I ask consent that that be done.

The CHAIRMAN. So ordered.

Senator SARBANES. Thank you. I see my time is up. We yield to the other side.

The CHAIRMAN. Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman.

I would like to just start out by talking probably about one of the little things that Mr. Kendall referred to as the tempest in the teapot, in dealing with these documents that were discovered in the

White House, documents that apparently people didn't think were that important as far as the way they were handled, that they would be a positive in showing to corroborate some of the statements that Mrs. Clinton had made, that she wasn't involved with a lot of the billing dealing with Castle Grande. I just wanted to make a couple of quick comments on that, because all the billing, and it's been insinuated that everybody knew this by IDC.

I've been involved with some developments, and I know that might be the legal term and that might be the way the billing is, but once a project has been given a name such as Castle Grande, it's always referred that way. And I think Mr. McDougal had spent a lot of money in trying to inform the community of Little Rock, Arkansas that Castle Grande was there and was for sale.

I don't see that everytime he talked to his legal representation, he would refer to it as IDC; yet in the public or in common terms, it was always referred to as Castle Grande. So I am not sure that there is a complete innocence of not knowing the two were somehow the same pieces of land.

Also, what we have heard, Mr. Chairman, about the cooperation and the thousands of documents that we have received, it looks like—we are looking for the needle or some pertinent information and what we've been given is the haystack. So we've been given a lot of information that probably is worthless, and the information that we have been after, we don't seem to be getting it. And when we do get some of the information, it's heavily redacted.

But Mr. Kendall, dealing with when the information was found and you were notified by Ms. Huber that these records were found, why was the need to analyze them for your client more important than evidentiary concerns? It kind of reminds me of the old axiom which says, "It's easier to beg for forgiveness than to give permission." So in other words, decisions were made that were irretrievable as far as maybe getting some fingerprints, as Ms. Sherburne brought up, in the meeting. So there was some concern about evidence on this, and knowing well in the media—and you yourself knew that these records had been subpoenaed and the subject of a lot of conversation. Why didn't you think it was more important to at least preserve that and still be able to protect your client?

Mr. KENDALL. Well, I think that we have testified about what we did. There were a number of different responsibilities. One was to furnish copies to the agencies that had requested them. We did that in a way which would interfere least, we thought, with any forensic tests that might be done. We ran copies and then copied from the copies.

But in terms of the review of the documents, that was obviously necessary to determine that they were responsive, that there were not privilege issues or other matters that ought to be dealt with. And this was the joint judgment of the three lawyers involved. It was not one person making the decision.

Senator GRAMS. Once the decision was made, though, in the review of the documents, there still could have been a time to have others brought in and counseled before copies were made or more possibility of disturbing any kind of evidence, because I know you've tried to shift it and say that the contents of the records are what's important or questioned here, but I think, as the Chairman

mentioned a while ago, sometimes it's the question of how they got there, where were they, who handled them, that is as important in this as the contents or what the billings indicated.

Mr. KENDALL. Senator Grams, let me say to that, we may never know precisely how these records got there. This may be one of the many meaningless mysteries of Whitewater. My point was that there is no conceivable reason to hide them or to secrete them, so that they're really not a paper switchblade at all, they are helpful evidence. And that weighs in the question of what was done with them to get them out.

Senator GRAMS. But then I go back, it is important how they got there because we do have questions about files taken from Mr. Foster's office. His handwriting was on these documents. We know, as the Chairman pointed out, Mr. Castleton and Ms. Williams moved documents from the White House offices to the personal residence, so there was a lot of questions on how they got there, who handled them. So that's why I disagree with—evidence was very important in part of this.

Ms. SHERBURNE. Senator, may I add that I don't think that we disagree that the question of how the documents got there is one that's entirely appropriate to examine, that's one of the reasons we are here cooperating with you, that we've encouraged witnesses to cooperate in this inquiry. I think that the substance of the documents is supportive, it's one of those situations where there's good news and bad news with the discovery.

One is, you know, the records are found, they support what we have been saying, but they were found in the residence and there are going to be questions about how they got there and why they weren't found earlier. We recognize that those questions are appropriate and we are trying to cooperate with you, and with the Independent Counsel in helping get those answers.

Senator GRAMS. But some of the evidence about it then was really eradicated and we won't know, and maybe will not be able to glean from that, so you know, after—

Ms. SHERBURNE. Senator, we don't know that.

Senator GRAMS. —looking for 2 years, one more day would not have hurt.

Ms. SHERBURNE. No one has said there is an issue—

Senator GRAMS. By handling them and photocopying, it didn't erase or anything any of the, maybe, evidence or fingerprinting—

Ms. SHERBURNE. I haven't heard anyone say that.

Senator GRAMS. Well, I have a question about that Ms. Sherburne. In talking about Ms. Huber, in some of your answers you seem to be questioning how she found the records, that she seemed to be confused. Again when we had her here testifying before the Committee, she was very crisp about her answers. So are you trying to, at best, say that she had poor recall or maybe insinuating somehow that she might have lied about how they got there?

Ms. SHERBURNE. No, I'm simply answering your questions with the facts. I was asked what did she say, and I told you what she said. I recognize that the fact of what she said on that night suggests confusion, where her testimony before this Committee didn't. I am not suggesting or reaching any conclusion about that. I am reporting to you the facts of what occurred that night.

Senator GRAMS. There was also discussion, though, about having her attorney question her even further about how she found this and some of the—what clouded issues or confusion that she seemed to have. Was this trying to counsel her on getting a story straight, or was this really trying to—

Ms. SHERBURNE. No, I think it was—you saw Ms. Huber, you know that she's an elderly woman. She was very flustered that night. She seemed very confused. And it didn't seem to me that it was constructive or appropriate at that time to try and press her on her recollections and determine what she knew for sure, what she didn't know, what she was guessing about, what she knew from her own personal experience. It was simply that I thought she clearly needed to calm down, settle down, and wait for an opportunity to discuss it with her lawyer before we proceeded any further.

Mr. KENDALL. If I could comment, Senator Grams, I think it was quite the opposite of an attempt to get her story straight. I think that both Ms. Sherburne and I felt that it would be improper for us to press or pressure her. She needed to be examined by her own lawyer, who had no responsibility except to her, and the most appropriate way to proceed would be to have Mr. Schuelke do it without having the White House lawyer and the personal lawyer kind of hovering over her.

Senator GRAMS. I have a question of why these documents made her so nervous, then; that's why I was concerned.

Ms. Sherburne, you have said that after this discovery of the documents, that you notified members of your staff, which I would assume you would do, but then you also notified Mr. Harold Ickes.

Ms. SHERBURNE. That's correct.

Senator GRAMS. First, could I ask you, who is Mr. Harold Ickes?

Ms. SHERBURNE. He is the Deputy Chief of Staff at the White House.

Senator GRAMS. Why did you call him, not Mr. Panetta, not the Chief of Staff or others? Why did you call Mr. Ickes?

Ms. SHERBURNE. Mr. Ickes is the person in the Office of the Chief of Staff to whom I report. I also have a reporting relationship with Mr. Quinn, but Mr. Ickes is someone to whom I report, so I called him and reported this development.

Senator GRAMS. Who does Mr. Ickes report to?

Ms. SHERBURNE. The Chief of Staff, Leon Panetta.

Senator GRAMS. What was his reaction when you first told him about these documents being found?

The CHAIRMAN. I'm going to ask, I think—that is a question we will pursue, but we have conceded in the interest of time where counsel—because again Ms. Sherburne is counsel, Mr. Kendall is counsel, without conceding the issue or even raising the issue of privilege, we will not go forward. So I would ask if the Senator—I'm not suggesting the question isn't appropriate, but at this time we have agreed not to go forward with that.

Senator GRAMS. Maybe I could just make a comment or maybe elicit an answer—

The CHAIRMAN. You can certainly make a comment.

Senator GRAMS. Mr. Ickes is the source of many of the quotes in the Gearan memos that we have received here as recently as just last night and has long-time involvement with the Whitewater De-

velopment Corporation affairs on behalf of the President and the First Lady.

The Gearan notes about the Whitewater meeting, in those notes Mr. Ickes seems to be formulating moves that needed to be made regarding the stories and interviews and other things. And I was just going to ask you if that's why you called him, if this was a reason, because he needed—is that—

The CHAIRMAN. Well, I'm going to leave it and I'm going to say that nothing should be inferred by the manner in which Ms. Sherburne responds if she feels comfortable or would rather we review that at another time.

Let me suggest this. I don't want to place her in a position—we may agree or disagree on different things, I mean, we're going to do that, but in terms of this, I would ask my colleague to suspend that line of examination, only because in good faith we have met and attempted to resolve some of these matters without testing them, and I think the question is appropriate, but not at this time.

Senator GRAMS. Can I make one other observation, then?

The CHAIRMAN. You certainly can make—I think it's obvious why you would want to pursue this, given the notes, given Mr. Ickes' involvement, et cetera, what if anything, but I think we'll pursue that at another time. We'll pursue it when Mr. Ickes is here.

Senator GRAMS. Just one other observation then, in going back to this not being a very important piece of documents, we're making a tempest in a teapot here. But this was an important enough piece of paper or documents that were found that it prompted a meeting the next morning with the President, Ms. Sherburne, and Mr. Ickes. So it seems to me that somebody was very interested in these documents and needed to go right to the top to find out what to do with them.

So without asking a question I just wanted to make it, that this seemed to be a very important discussion that was held the next day regarding these very documents that appear to have some people believing they're not that important.

Ms. SHERBURNE. I think, Senator, that is consistent with the distinction I was drawing. I think the records themselves have a significance that one could describe as a tempest in a teapot. The discovery of the records and the recognition that the discovery would have reverberations was a different matter. It was something that, I think, I certainly felt compelled to notify the people to whom I reported and the people who would be directly affected by it.

Senator GRAMS. And to bring the spin doctor, Mr. Ickes, in on this was very important at the time as well?

Ms. SHERBURNE. I report to Mr. Ickes.

Senator GRAMS. A couple of quick questions. Going back to Ms. Huber and the fact that the follow-up memo of asking for information and further documents was issued, it is my understanding that Ms. Huber's office was not searched by your office or not asked for information dealing with the scope of the subpoena or the document requests?

Ms. SHERBURNE. Oh, no, she was asked.

Senator GRAMS. She was asked. I mean, there was information or you sought files or documents that you thought were pertinent or asked her to provide such files or information?

Ms. SHERBURNE. On October 23rd, we circulated a White House-wide request that I understand did go to Ms. Huber.

I have, since my deposition, learned that there was a telephone call placed specifically to Ms. Huber's office in which there was a specific request to search that office for material that was responsive to our October 23rd request that would have called for these records, if they had been in her office.

Senator GRAMS. So it's just my understanding that the formal memo had not gone to her office officially, and I just thought it was kind of weird that here is a lady that was very close—

Ms. SHERBURNE. Right, and I'm correcting your understanding.

Senator GRAMS. Finally, I would like to talk a little bit quickly before my time runs out about some of the thoughts expressed by the Chairman of the Committee and that the investigation has been criticized by the White House and by partisan supporters and even the Democratic Members of this panel who sit on the Committee, that somehow this is being dragged out for political reasons.

But I think if we look at the delays in getting some of the information, and I know some of the problems dealing with that and you talked about how broad some of the requests have been, but maybe we have now been faulted for maybe narrowing down the requests too much, because when we're dealing with the White-water issues, just an example of redacted information, 60 percent of the notes that Mr. Gearan took that clearly were labeled White-water have been redacted. So have we narrowed our request for information so much that this has all been eliminated?

So if there is Chinese water torture here with the drip drop of information, again it seems to be of the information that this Committee has been getting so slowly. And again, like I have said, we have asked for the needle and seem to have gotten the haystack out of this.

Senator SARBANES. Mr. Chairman, I don't know if Senator Grams was here when this redaction issue came up before, but I think it's extremely important, while he's still here, to make it very clear that it's been indicated to us by Ms. Sherburne that Counsel, as we have done in previous instances, because the Senator also made references to other redactions, that Counsel for the Committee, Majority and Minority, if they wish to do so, go down and examine the unredacted document to ascertain for themselves that the matters that have been redacted were not relevant and that what was redacted were matters not responsive to the Committee's requests.

Now, Ms. Sherburne indicated in her testimony here today—and I'm concerned because I think this particular line of questioning is very unfair to her—that she understood that since you had notes that at the top said Whitewater and then you started going through them and there was subject matter redacted, that one would say well, you know, did everything that were in these notes refer to this heading that was up at the top. And said if Counsel wished to comment, examine, as has been done in the past, they are in effect inviting them to do so. They will have a chance independently to ascertain for themselves that the matters redacted were matters that were not responsive. That's what we have done in previous instances where this issue has arisen and we've been able to get satisfaction, to everyone's satisfaction.

The CHAIRMAN. We will pursue that in that manner, and I must say that we have had some good success. I must also say, and now I would be intruding on the Minority side, but we will pursue that, and hopefully Monday or Tuesday we could set up an appointment to get Counsel to go over those materials.

Ms. SHERBURNE. We could do it this afternoon if you like.

The CHAIRMAN. That would be fine.

Mr. BEN-VENISTE. To pick up on questions put to the witness, there had been observations about a tempest in the teapot, and the tempest has sort of spilled over into areas that I don't think Mr. Kendall intended them to be applied to. Your reference to a tempest in a teapot was with respect to what, Mr. Kendall?

Mr. KENDALL. The intrinsic importance, novelty or significance of the billing records, not their discovery but what it is they signify. My point was that much of what was in these billing records was already known, not mysterious. And insofar as there is additional detail provided in the billing records, it's by and large helpful to us in establishing precisely what Mrs. Clinton did and what the Rose Law Firm has done.

Mr. BEN-VENISTE. So it is fair to say that it is your position that you wished very much to make these documents public so that they could be reviewed by everybody, critically, to determine what their significance is and what their importance is in a relative sense to whatever is the subject of this investigation at the moment?

Mr. KENDALL. Amen.

Mr. BEN-VENISTE. If you had given the only document, the original document without making a copy, to the Independent Counsel pursuant to its subpoena, then Rule (6)(E) of the Federal Rules of Criminal Procedure would have prevented Independent Counsel from giving them to anyone else. Then you would be the subject of criticism, would you not, for keeping material of relevance to this Committee's interest from the Committee?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. It would be the exact opposite of what has occurred, instead of the uncover-up, this would be a cover-up?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. Let me go to the question of Mr. Gearan's notes. I trust, Ms. Sherburne, that you were not particularly happy to have to add to the things about which you would testify today, the substance of what's in Mr. Gearan's notes?

Ms. SHERBURNE. That would be right.

Mr. BEN-VENISTE. And in that regard, nevertheless, the documents were turned over to us prior to your testimony rather than subsequent to your testimony?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. So that we could ask you questions about the circumstances of their discovery, which you have answered repeatedly today, and we could have that information?

Ms. SHERBURNE. That's right.

Mr. BEN-VENISTE. Now with respect to the notes themselves, rather than have them characterized somehow, with respect to Ms. Bassett and the question of the information that she would be in a position to supply, is it fair to say that it was recognized by the

writer of these notes that Ms. Bassett was in possession of information that would be useful for the Administration to have repeated?

Ms. SHERBURNE. That's what they appear to suggest to me, yes.

Mr. BEN-VENISTE. We, of course, have heard from Ms. Bassett for a full day under oath here about all of her contacts with all individuals associated with the Administration in this matter, I believe. With respect to that, Ms. Bassett has testified that she wasn't pressured to do anything improper, either at the time of the representation by the Rose Law Firm or during the 1992 campaign where she made statements about her earlier activity. Is that consistent with your understanding?

Ms. SHERBURNE. Yes, it is.

The CHAIRMAN. We're going to attempt, Ms. Sherburne and Mr. Kendall, to try to wrap this up as quickly as possible. Mr. Chertoff is going to ask some questions and then we'll have an opportunity to wrap up and then we can mercifully have some lunch maybe.

Mr. Chertoff.

Mr. CHERTOFF. I want to first of all ask both Mr. Kendall and Ms. Sherburne, we're trying to go through the process of eliminating people who might have had the documents before January 4th, so I want to, for your sake as well as for ours, just absolutely confirm positively that the first time you saw the billing records we've been talking about which are before you was on January 4th. That's right, Ms. Sherburne?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. That's right, Mr. Kendall?

Mr. KENDALL. Except for the billing records which are included in this stack of 116 pages which I had previously seen.

Mr. CHERTOFF. There were some that you had seen, but the whole stack you had not seen before?

Mr. KENDALL. That's correct.

Ms. SHERBURNE. I would have to caveat my response with the same qualification.

Mr. CHERTOFF. We understand that there are some pages of that, of the bills, that were out previously but the backup detail on the printouts that show the time that was spent on things, that you did not see before January 4th; right, Ms. Sherburne?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. And you didn't see that before January 4th?

Mr. KENDALL. That's correct.

Mr. CHERTOFF. It follows from that, Ms. Sherburne, that you did not see these printouts in the Book Room at any time in the White House?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. Mr. Kendall, that goes for you, too; right?

Mr. KENDALL. I certainly didn't see anything I recognized as this in the Book Room.

Mr. CHERTOFF. Now, I want to just briefly touch on this issue about what these are and the significance of them, very quickly. Mr. Kendall, you're an excellent advocate for your client. I mean, you're going to make a terrific presentation of the point of view that you want to advocate. But just so we're clear, the printouts which actually show the time spent, not the bills that don't show time spent, but the printout that tells you what every attorney did

for every part of the matter that we have these records for, that was not public before January 4, 1996?

Mr. KENDALL. Yes, it was, because it was in large measure—if you look at the January 30th bills, for example, which were public in the House, that detail on those bills comes straight out of the time detail.

Mr. CHERTOFF. And does it show the time breakdown for each attorney?

Mr. KENDALL. It lists the attorneys. It does not show the time breakdown.

Mr. CHERTOFF. So that you can't tell from that bill how much time each attorney spent on each of the matters listed in the bill?

Mr. KENDALL. You can't tell from that bill, but when you go to the fee recap, you can tell with some precision how much time the individual attorneys spent on the various matters.

Mr. CHERTOFF. Let me be more specific. Was there anything out there before January 4, 1996, that indicated that Mrs. Clinton had made more than a dozen calls or had had more than a dozen telephone conversations or conferences with Seth Ward?

Mr. KENDALL. Yeah, there was evidence that she had been dealing with Mr. Seth Ward on the wet/dry issue and on the sewer regulation.

Mr. CHERTOFF. Please answer my question. Was there evidence that she had had, very specifically, at least 12 discussions, either on the telephone or in person, with Seth Ward? Was that out there before January 4th?

Mr. KENDALL. There was not that, but there was evidence from which you could infer discussions and conferences, so it was not a mystery when the billing records were examined.

Mr. CHERTOFF. For example, on February 28th, when there was a call of almost an hour with Seth Ward, concerning the matter listed under IDC, was that fact out there publicly? And I'm saying "publicly" because I don't want to know what you—discussions you had with your client. I want to know publicly and available to this Committee, was there evidence that there was a call of .8 of an hour, almost an hour, on February 28th between Seth Ward and Mrs. Clinton?

Mr. KENDALL. I think it was the March bill that does detail conferences with Seth Ward. It doesn't break it into times.

Mr. CHERTOFF. It doesn't tell you how long the call is, date of the call?

Mr. KENDALL. Tells you the period, the attorneys involved.

Mr. CHERTOFF. Within a month, it doesn't tell you the day; right?

Mr. KENDALL. Correct.

Mr. CHERTOFF. That was a significant date, Mr. Kendall, because we know February 28th was a date that there was a lot of activity at the savings and loan concerning Mr. Ward and his loans.

Mr. KENDALL. Mr. Chertoff, as you say, we may disagree with the significance of things, but I will accept that, I will accept our disagreement.

Mr. CHERTOFF. You will agree with me that if we wanted to know the days on which contacts were made, the amount of time of the contacts, some of the details of the contacts, these first be-

came available when those records were discovered, the printouts were discovered, on January 4th of this year?

Mr. KENDALL. With the precision of that detail, yes. Generally though, they were. The devil is sometimes in the superstructure, Mr. Chertoff, as well as in the details.

Mr. CHERTOFF. Let me ask you this, Mr. Kendall. Would you agree with me that the issue of why these documents were not turned over is an important issue?

Mr. KENDALL. I don't think it is a particularly significant issue. It is a mystery. The documents were turned over when they were discovered.

Mr. CHERTOFF. Well, wait a second. Are you in a position, as you sit here now, to vouch for the fact that the first time that they were discovered by anyone in the White House is on January 4th or even in early August?

Mr. KENDALL. Mr. Chertoff, I have testified to what I can today about the discovery of the documents.

Mr. CHERTOFF. Yes. And you only can tell us that when you discovered them, or learned about them on January 4th, you took prompt steps to turn them over. But you will agree with me that if somebody knew about the subpoenas, if somebody knew that the subpoenas, any one of the subpoenas called for these billing records or included these billing records, and if that person had possession or control over the records and didn't turn them over, that that would be a pretty serious matter?

Mr. KENDALL. Well, I think that to posit that, you would have to posit some motive for that person acting in that way, purposefully not to turn over the records.

Mr. CHERTOFF. Mr. Kendall—

Mr. KENDALL. I scratch my head, Mr. Chertoff, to think of any reason why a rational person would not have turned over these records.

The CHAIRMAN. Mr. Kendall, let me attempt in 60 seconds to summarize it again.

Given the testimony of Maggie Williams that she did not take any documents out of there and that all of the documents that were taken out were—except those documents that were turned over to yourself, you didn't have these billing records, then how did they turn up in the residence?

That is why it is not some insignificant, trivial matter, given the history. And let's not try to go through that history. It relates to Ms. Thomases calling Bernie Nussbaum, to the methodology of the investigation being changed, to the Justice Department and the Deputy calling up and saying Bernie, are you hiding something, to finally the production of this. Reasonable people can put their inferences as it relates to what the documents do or don't say, the significance, et cetera, but to say that this is like a meaningless document or production or—it is not.

You just go into the body of fact that cries out and says how did they get there, why were they withheld. They obviously came from Mr. Foster's office, or he certainly had them. At what point in time did they move from his office and under whose direction, and who was the mover to bring them to the White House—

Mr. KENDALL. Mr. Chairman.

The CHAIRMAN. —the personal residence?

Mr. KENDALL. The point I made to Mr. Chertoff is that I simply cannot think of a plausible human reason for somebody to hide or secrete them.

The CHAIRMAN. Because let me tell you why. If people have testified with specificity that no documents were taken out of Vincent Foster's office and, indeed, we know that, at the very least, Mr. Foster had control and possession over these documents at some point in time, that goes directly to somebody not being candid and truthful, or the possibility that they were less than candid with this Committee, and with others, under sworn statement. That is obvious.

So when you say you cannot for the life of me, if somebody comes in here and does not want the Committee to know that they took documents out of that room, meaning Vincent Foster's office, that should answer for you why people would not want these to surface.

Mr. KENDALL. Mr. Chairman, I don't know of any evidence that these were in Mr. Foster's White House office. As you know for yourself, from having interviewed Mr. Hubbell, there was great confusion at the time of the departure of the four Rose Law Firm partners for Washington, DC. And Mr. Hubbell wound up with documents—

Mr. CHERTOFF. I don't think the testimony is there was confusion, Mr. Kendall. I think the testimony was Mr. Hubbell went about removing certain files from the firm. But I want to ask you this, Ms. Sherburne, you had the insight—and I compliment you for it—on the evening of the 4th, that there was an issue to be considered about whether fingerprints might be of value to the Independent Counsel or someone else who wanted to see who had had possession of the documents; that's correct; right?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. You, Mr. Kendall, and Mr. Schuelke discussed it?

Ms. SHERBURNE. That's right.

Mr. CHERTOFF. And you understood in the course of that discussion, I take it, that the Independent Counsel might want to pursue the question of who had control of the documents, who might have handled the documents, because the Independent Counsel might want to determine whether someone had knowingly failed to comply, had knowingly defied his subpoena?

Ms. SHERBURNE. Well, I think what I understood was that the Independent Counsel, and this Committee as well, would want to know why the documents were not produced sooner.

Mr. CHERTOFF. Who might have had them and handled them?

Ms. SHERBURNE. It depends on the explanation. I think that night—we still don't know, frankly, don't know the facts. We don't know that they were in Mr. Foster's office, we don't know whether they were stuck in Mr. Foster's office. We don't know a lot.

Mr. CHERTOFF. That's right.

Ms. SHERBURNE. What we recognized that night was that there may be some significance attached to how they had been handled.

Mr. CHERTOFF. That's exactly right. And even taking this Committee out of it, you will certainly agree with me that one of the people who had the right to make a decision about how to conduct this investigation was Mr. Starr? Mr. Starr would have the respon-

sibility of finding out some of the answers to these questions you've just mentioned; right, about who had the documents, where were they held, who had control over them?

So you understood when you had the discussion with Mr. Kendall that the fingerprints were something that could be of value to Mr. Starr; right, that crossed your mind?

Ms. SHERBURNE. I think that's probably right, yes.

Mr. CHERTOFF. Mr. Kendall, that crossed your mind, too; is that right?

Mr. KENDALL. Yes.

Mr. CHERTOFF. Now about what time did this discussion occur? Was it around 6 p.m.?

Ms. SHERBURNE. It would have been 6 or 7 p.m.

Mr. KENDALL. I would have said more like 6 p.m.

Mr. CHERTOFF. Between 6 and 7 p.m. did you pick up the phone and try to reach Mr. Starr's office? Recognizing your legitimate concern that you had obligations to produce to a number of places, did you pick up the phone and call Mr. Starr or this Committee or the RTC to ask them whether they had, whether Mr. Starr or anybody else had a desire about how to proceed in terms of preserving the possibility of taking fingerprints? Did you make that call, Ms. Sherburne?

Ms. SHERBURNE. No.

Mr. CHERTOFF. Did you make the call?

Mr. KENDALL. No.

Mr. CHERTOFF. Did you discuss whether you ought to pick up the phone and call Starr and say look, we've discovered these things, we have obligations to turn them over, we understand that may be an issue with fingerprints, how do you want us to proceed? Did you consider doing that, Ms. Sherburne?

Ms. SHERBURNE. Calling the Committee?

Mr. CHERTOFF. Calling Starr.

Ms. SHERBURNE. Calling Starr, no.

Mr. CHERTOFF. Did you consider it, Mr. Kendall?

Mr. KENDALL. We determined the appropriate way to proceed, and that's as we've testified.

Mr. CHERTOFF. Did you consider that maybe Mr. Starr might have a different view about the appropriate way to proceed?

Mr. KENDALL. I didn't—I considered that what we had to do was to copy the documents and get them out to the various agencies as quickly as possible.

Mr. CHERTOFF. And you did this with the consciousness of the fact that that had the potential to contaminate or disturb or in some way alter the documents in terms of the ability to lift fingerprints off?

Mr. KENDALL. I don't think that's true. I think that I did not view this as a forensic question. What little information about fingerprints I have from prior experience suggests that documents are very different than solid objects, such as glasses or metal surfaces.

Mr. CHERTOFF. But I know if there's a print on a piece of paper and you put your hand on top of it and leave another print on top of the first print, it is going to obliterate or obscure the underlying print?

Mr. KENDALL. You don't smudge documentary prints. If they have a latent on it, you don't smudge that print.

Mr. CHERTOFF. Are you telling us you actually reached an expert conclusion at the time that there wasn't going to be a problem?

Mr. KENDALL. No, I'm not telling you at all. I'm not an expert in fingerprints, Mr. Chertoff. But I'll tell you that it was not, for reasons I've already stated, a forensic question to me.

Mr. CHERTOFF. But the question is not whether it was up to you to make the final decision, because by not calling Starr what you did was, you took it out of his hands.

Mr. KENDALL. No.

Mr. CHERTOFF. If Mr. Starr believed it was a forensic issue, by the time he learned about the documents the next day, there was nothing he could do about it; right?

Mr. KENDALL. Well, we would have been criticized, Mr. Chertoff, whatever we did.

Mr. CHERTOFF. Do you think you would have been criticized for calling Starr?

Mr. KENDALL. Yeah. You would have criticized us if we had turned over the documents to the Committee or to the Independent Counsel without keeping a copy. You would have said that was an effort to hide the documents, trying to keep them from the public.

Mr. CHERTOFF. Well, did you call the Committee?

Mr. KENDALL. No, because we determined that we had to make a decision as lawyers, the three of us, on the most appropriate way to proceed under all the circumstances. It is always possible to second-guess those kinds of decisions. That goes with the territory. You do the best you can and you try and make the right decision. And I think that's what we did that night.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. In fairness to Mr. Ben-Veniste, because I'm going to give him the wrap-up and we are going to thank everybody, if you would yield for an observation, and if you want to answer, that is fine.

Again, you did say hindsight, but you see, I think Ms. Sherburne, she was absolutely right in being concerned and raising it. I commend her for also being as candid and truthful as she was both in her deposition and today, and saying look, there's going to be a question, should we do this as it relates to fingerprints. Did it strike you that you could have really met all of the objectives by calling the FBI, telling them to come over?

Ms. SHERBURNE. Well—

The CHAIRMAN. Let me finish and then you can tell us.

Ms. SHERBURNE. We've been criticized for doing that in the past.

The CHAIRMAN. No, no, no, no, only for this.

Ms. SHERBURNE. I'm sorry. It's a visceral reaction.

The CHAIRMAN. All right. Calling the FBI or the Secret Service or those people who do have the ability to review the document for fingerprints, all right, make copies with the least impact in terms of the integrity of it, and thereafter turn it over to counsel, advising the Independent Counsel of what you had done. It seems to me that that is something, a course that could have been followed. It wasn't followed, but it could have been. Did you consider that?

Ms. SHERBURNE. No.

The CHAIRMAN. I mean, see, that's where I think reasonable—well, I'm not going to say that. That is another perspective, maybe you did not consider. Ms. Sherburne, you at least considered the question of the fingerprints, but I just raise that, and I thank my colleagues for their indulgence.

Mr. BEN-VENISTE. My pleasure, Mr. Chairman.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

With respect to what was done that evening, first of all, did you have some reason to believe that photocopying the documents would remove fingerprints that were on the documents?

Mr. KENDALL. No.

Mr. BEN-VENISTE. Did you have some reason to believe that fingerprints which are already on a document will remain so even though you attempt to remove them?

Mr. KENDALL. Yes.

Mr. BEN-VENISTE. And indeed, we have had the testimony of a fingerprint expert here before this Committee, Mr. Hupp, I believe, an analyst from the FBI who testified that with respect to porous substances such as paper, that other than actually obliterating the paper, the fingerprints stay.

So I suppose if this issue becomes more focused and it becomes important, we will hear again from the fingerprint expert, but let me go to the observation you made, Mr. Kendall, that the devil is sometimes in the superstructure in addition to the details.

When we look at the billing records themselves and the production of billing records, albeit at a point sometime subsequent to the first request for those records, and we hear the terms "obstruction of justice" bandied about, can you say how someone was obstructed by the production of evidence which we have now seen and analyzed, and reanalyzed, and rereanalyzed?

Mr. KENDALL. I cannot.

Mr. BEN-VENISTE. And indeed, the distinction which was made earlier between forensic care, if someone believes a crime has been committed, such as murder by knife in the O.J. case, and the O.J. missing knife had somehow turned up in the White House, to use an absurd example—which probably will be picked up by a number of people who write about the conspiracies of Whitewater and weave the O.J. case into it—but if such evidence of a crime is discovered, then one would appreciate that one ought not to touch the instrumentality of the commission of the crime; correct?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. Here the underlying event was billing records, not murder, billing records; is that so?

Mr. KENDALL. Sometimes legal billing records are a form of murder, at least the clients think so. But I take your point and I agree with it.

Mr. BEN-VENISTE. It would be a form of murder to have to pore over them as we have all done?

Mr. KENDALL. Very true.

Mr. BEN-VENISTE. Or to try to glean what significance the billing records of 11 years ago back in Arkansas in connection with the Rose Law Firm's representation of this subsequently failed S&L has to do with the price of eggs.

Anyway, at the point that you made the determination, you were sensitive to not being criticized for somehow shunting the material into a protected corner of the legal system, that is a subpoena which is protected by Grand Jury secrecy from which the recipient of the material, that is the Independent Counsel, would have no choice but to maintain the confidentiality of that material?

Mr. KENDALL. Yes. Part of the quandary was there were legitimate demands by more than one investigative agency for the same records.

Mr. BEN-VENISTE. So rather than using the biblical solution of dividing the baby in half, you used the modern technique of photocopying the baby?

Mr. KENDALL. That's correct.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. I want to thank—

Senator SARBANES. Mr. Chairman, I want to make an inquiry of Counsel. I'm not clear—and I put it to both Mr. Ben-Veniste and Mr. Chertoff—if these materials had been given to the Independent Counsel who is proceeding with an inquiry with a Grand Jury, would he have then had to hold them?

Mr. CHERTOFF. No. What typically would have happened is this. If you are obliged to send over material to the Grand Jury, as, for example, was the case of the briefcase, which was something you couldn't make a copy of, we would direct the subpoena to the person who originally produced the document. And this is a common thing that's done. I mean, it was done hundreds of times during the years that I was prosecutor, and what would happen is the person would go to the Independent Counsel or authorize the Independent Counsel to release the item to us so that we could look at it or use it or get a copy.

What plainly could have been done without violating any rule of Grand Jury would be to have the person who had the documents notify the Independent Counsel, ask the Independent Counsel themselves either to authorize copying or to do copying so that a copy would be returned.

I will tell you that in cases all over the country where prosecutors pick up documents, either by subpoena or by search warrant even, the person who provides the documents is always entitled to get from the prosecutor a copy of what they produced. It could have been furnished to us, so that there was—the mere contact with the Independent Counsel about these documents and a request directed to the Independent Counsel to make sure there were copies made available to us, would not in any way have been blocked by the rule of Grand Jury secrecy.

Mr. BEN-VENISTE. Well, I may have a slightly different take on this, Senator Sarbanes, than my friend, Mr. Chertoff, has. The briefcase which was exhibited here and provided without any documentation or chain of custody was provided because the Independent Counsel said it had no evidentiary value. These records which were the subject of a subpoena presumably have evidentiary value. We think they do. We have no reason to believe the Independent Counsel would not.

Materials which are obtained under Rule (6)(e) privacy, indeed the Independent Counsel has taken the position with respect to re-

quests that we have made jointly in our Committee that it will refuse to provide information to us.

A specific example of that are the notes of the interviews of the very Secret Service employee who has been referred to in connection with his observations on the night of Mr. Foster's suicide. The Independent Counsel has been very strict in guarding the prerogatives of his office and Rule (6)(e). We have made repeated efforts to obtain various information from the Independent Counsel's office, and the (6)(e) confidentiality requirement is the answer that we have received.

Now in hindsight, could there have been some big negotiation to achieve the same ends as were ultimately arrived at, that is that we get copies of the material, Independent Counsel gets them. If they want to perform tests on them, they can do so.

The only thing that I see having occurred is that fingerprints may have been added rather than subtracted from the documents. If the Independent Counsel—and we don't know this—goes through the forensic process of obtaining latent fingerprints from the documents, and people who handled them on the evening of the 4th left fingerprints, then those prints will be found and will be discounted presumably in terms of any evaluation of who had the document.

The point that I think was made is a question of material being turned over, albeit late, what effect has this had on anybody in terms of obstructing any investigation. As far as we can see, it has helped our investigation. We have received the material, we have reviewed it, we have analyzed it, and we will all come to our conclusions about its importance.

The CHAIRMAN. I want to thank Ms. Sherburne and Mr. Kendall for their patience and for their testimony today. I think it was very straightforward, I want to tell you. And again, Ms. Sherburne, we may have certain differences as it relates to the manner in which things are produced. Let me say this to you in order to be fair to you—and I do not expect you to reply, if you want, that's fine—and it is not meant to be challenging, it is meant to say that you represent a client, there are constraints that an attorney has reasonably placed upon him or her as a result of that representation by a client.

So again, I wish that we could have found a better way, better methodology of moving this forward. But I want to assure you of one thing, and I take your statement that you have attempted to comply, that you personally have made every effort to get us documents, to get us information, et cetera, you have made your own individual best effort, I accept it.

But I want you also to know that it has never been the intention of this Committee or anyone that I am aware of to slow this process down. That has just not been the case, so I want you to know that. And if we can help and work together to facilitate, whether it is the production of documents, or whether it is a resolve of disputes that we did—

And I want to commend the Ranking Member and Minority Counsel for working out a methodology that we could get as much done today as we did, instead of raising an issue, or possibly raising an issue that wouldn't serve getting us more facts. We may

come down to that at a later time, but that would have just slowed the process down.

So I want to commend the Minority and I want to tell you that we look forward to working with you, really. And you know, just like you can't be held responsible for everything that Mr. X, Y, or Z says in the Administration, et cetera, we all have those kinds of constraints and those kinds of things that we have to deal with in the real world, and this is the real world.

So I share that with you, and thank you for your participation.

We're going to adjourn until 2:45 p.m.

[Whereupon, at 2:03 p.m., the hearing was recessed, to be reconvened at 2:45 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. I'm going to ask our witnesses, for purposes of the oath, if they would stand.

[Whereupon, Capricia P. Marshall, Special Assistant to the First Lady, Gary J. Walters, Chief Usher, The White House, and Dennis W. Freemyer, First Assistant Usher, The White House; were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

I want to start by saying we thank the witnesses for coming in, and if there are any statements that you would like to make at this time, we would be very pleased to receive them.

Ms. Marshall.

SWORN TESTIMONY OF CAPRICIA P. MARSHALL SPECIAL ASSISTANT TO THE FIRST LADY

Ms. MARSHALL. No, I have no statement.

The CHAIRMAN. Mr. Walters.

SWORN TESTIMONY OF GARY J. WALTERS CHIEF USHER, THE WHITE HOUSE

Mr. WALTERS. Yes, sir. I have a brief statement.

The CHAIRMAN. Wonderful. We'd be happy to receive it.

Mr. WALTERS. Mr. Chairman, today is a very difficult and uncomfortable day for me personally as well as the current and former members of the Executive Residence/White House staff who serve the Presidency. As a Federal employee with 25 years of White House service, 20 years in the Usher's Office and the last 10 as the Chief Usher, I have as one of my primary duties the privacy of the First Family. They live in a fishbowl, as everyone knows, and our office attempts to preserve the small amount of privacy they still have remaining.

Therefore, it is very unusual and troublesome for me to be thrust forward to speak of the private area of the White House that is the home of our President and his family. The residence staff works in anonymity to serve the Presidency to the best of our ability while striving to maintain the confidentiality of the First Family and their guests.

That having been said, Mr. Chairman, I will to the best of my ability answer the questions of the Committee fully and completely. I would respectfully request that the Committee consider the right of privacy of the First Family in the personal area of the Executive Residence and not release publicly the contents of the logs that identify those guests invited by the First Family into the private areas that compromise their—excuse me, comprise their home. It is my personal belief that this would be an intrusion into the lives of our President, their spouses, and their children that will have enormous effects on past, current, and future first families.

Thank you, sir.

The CHAIRMAN. Thank you, Mr. Walters.

Mr. Freemyer.

SWORN TESTIMONY OF DENNIS W. FREEMYER FIRST ASSISTANT USHER, THE WHITE HOUSE

Mr. FREEMYER. No, sir, I do not.

The CHAIRMAN. Let me suggest that you pull up that microphone. Before I turn to Ms. Fisher, let us understand something. First, we are appreciative of your cooperation, not only in being here, but also in terms of the depositions and your total cooperation. Second, this is an attempt to get the facts. We're not going to ask you to make any assumptions. We're attempting to narrow down and ascertain who may have had access, who did have access, and how the documents came to be where they were found. So it's nothing more than that and certainly as a result of your various positions and duties, that's why you find yourself here, not because of any conduct that we suspect, or surmise, or don't surmise, that you may have been engaged in, certainly no activity that would reflect improperly upon you, your positions, or your work in the White House, so I want you to know that. This is not an adversarial situation, and I want you to feel comfortable with that.

We're going to try to do this as quickly as we possibly can. At any time you feel you need a break, don't hesitate, let us know and we'll break. I want to put you at ease.

Ms. Fisher.

Ms. FISHER. Good afternoon. Ms. Marshall, what is your current position at the White House?

Ms. MARSHALL. I work for Mrs. Clinton as her Personal Assistant.

Ms. FISHER. How long have you held that position?

Ms. MARSHALL. Since January 1993.

Ms. FISHER. Prior to that time, were you working on the 1992 Presidential Campaign?

Ms. MARSHALL. Yes, I was.

Ms. FISHER. Am I correct that you're an attorney as well?

Ms. MARSHALL. Well, I graduated from law school, yes.

Ms. FISHER. What are your duties as Special Assistant to the First Lady?

Ms. MARSHALL. I have a variety of duties. I primarily follow Mrs. Clinton from morning until evening. I bring her to various meetings. I make sure that people attend certain meetings. In addition, I may substitute for certain staff members if we're going on a trip and a staff member is unable to accompany Mrs. Clinton on a trip. I will substitute for the Logistics Trip Director or possibly another person on that trip. On trips of long duration, I will accompany Mrs. Clinton and assist her with any sort of staff duties that she may need.

Ms. FISHER. I think you testified at your deposition that you are basically a shadow of the First Lady; is that correct?

Ms. MARSHALL. Yes, I basically am. In addition to that, I also help with follow-up after trips—and certain gifts and correspondence and things like that.

Ms. FISHER. Mr. Walters, I believe you said that you've been the Chief Usher for the last 10 years?

Mr. WALTERS. That's correct.

Ms. FISHER. Could you give us a little idea of what your duties and responsibilities are as Chief Usher.

Mr. WALTERS. Chief Usher of the White House has a staff of 88 persons who take care of the Executive Residence in its three primary duties; first, as the home of the President and his family; sec-

ond, as the office and a site for official and ceremonial events of the Presidency; and third, as a museum that's open to the public throughout the year.

Ms. FISHER. Mr. Freemyer, what is your present position at the White House?

Mr. FREEMYER. I'm an Assistant Usher.

Ms. FISHER. How long have you held that position?

Mr. FREEMYER. Since January 1986.

Ms. FISHER. Can you give us an idea of what your duties and responsibilities are?

Mr. FREEMYER. I am the First Assistant to Mr. Walters. I am also responsible for the maintenance and upkeep of the residence and supervise those members of our staff that participate in that. I also have project management responsibilities for ongoing design efforts and construction projects, major construction projects.

Ms. FISHER. Do you have architecture in your background?

Mr. FREEMYER. Yes, I do. I have a degree in architecture.

Ms. FISHER. Mr. Walters, am I correct that the First Family's private quarters are located on the second and third floor of the White House residence?

Mr. WALTERS. Their private quarters, that's correct.

Ms. FISHER. I would like to ask for a blueprint of the third floor of the residence be put up on the Elmo. I believe you might have one in your packet there.

Mr. Freemyer, I would like to ask you, what are the possible ways in which one could gain access to the third floor of the White House residence?

Mr. FREEMYER. There is a stairwell that runs from the basement all the way up to the third floor. There is also two elevators that essentially run from the same place, from the basement to the third floor. The other possibility would be from outside; that would require accessing the roof.

Ms. FISHER. If someone is admitted to the second floor of the residence, then they could take either the elevator or the stairs up to the third floor?

Mr. FREEMYER. There would be a total of two stairs that would connect the second floor to the third floor as well as two elevators.

Ms. FISHER. Mr. Walters, the Secret Service keeps a log of entries into the second and third floor of the residence; correct?

Mr. WALTERS. To the best of my knowledge, yes, it does.

Ms. FISHER. Your office also keeps an informal log—

Mr. WALTERS. That's correct.

Ms. FISHER. —of entries? And do I understand it correctly that there are basically three categories of individuals who have unrestricted access to the White House residence meaning they don't have to log in when they enter?

Mr. WALTERS. Well, they don't actually log in. They are logged in by the individuals who see them and interact with them.

Ms. FISHER. Who are those individuals?

Mr. WALTERS. Well, certainly the First Family, their guests and there are a limited number of staff to the President and the First Lady who have access to those areas.

Ms. FISHER. The overnight guests at the White House residence, they are put on the Secret Service log; is that correct?

Mr. WALTERS. To the best of my knowledge, yes, and they are also issued a pass.

Ms. FISHER. Mr. Freemyer, I would like to direct your attention again to the blueprint that is on the Elmo and ask you to look at the southwest corner to the room that's marked 319A?

Mr. FREEMYER. Yes, ma'am.

Ms. FISHER. Am I correct that that is the room that is commonly referred to as the Book Room?

Mr. FREEMYER. Yes, it is.

Ms. FISHER. And could you describe the possible entrances into this room?

Mr. FREEMYER. There is an entrance from a hallway directly to the north. There is also an entrance from what is marked on this drawing as the corridor directly to the east.

Ms. FISHER. There's a door in between the Main Hallway and the Book Room. Is that an automatic closing door, or is that a door that generally stands open?

Mr. FREEMYER. Most of the time, that door is closed. I believe it does have a closer on it, but I'm not certain of that.

Ms. FISHER. Mr. Walters, do you know if there's an automatic closing on that door?

Mr. WALTERS. Yes. If I could, the diagram that I'm looking at has a partial coloration on half of the room 319A, not the entire room. There are actually two doors from that center corridor that open into that room. Both have automatic closers on them from the central corridor but one of those doors is commonly blocked by material, file cabinets. Various items have been in front of that door. It's the southernmost door of those two that is the accessible door but as you indicated, they both have automatic closers on them.

Senator SARBANES. Which is the front of the White House on this diagram?

Mr. WALTERS. Sir, the north side of the White House as I am looking at these is at the bottom of this floor plan. The room that is marked "Sun Room" is at the south of the building.

Senator SARBANES. All right. Thank you.

Ms. FISHER. Mr. Walters, the room that's marked 323, could you describe what that room is?

Mr. WALTERS. That room is currently Mrs. Clinton's office.

Ms. FISHER. Am I correct that prior to the time when Mrs. Clinton started using that as her office, Ms. Huber on occasion used that as her office?

Mr. WALTERS. That's correct.

Ms. FISHER. Ms. Marshall, I'd like to direct your attention to July and August 1995. Did you work in the Book Room at that time?

Ms. MARSHALL. Yes, I did.

Ms. FISHER. Did you consider yourself the primary user of that room?

Ms. MARSHALL. I was the person mainly in that room, yes.

Ms. FISHER. And that room is kitty-corner to what has just been described as the First Lady's office; is that correct?

Ms. MARSHALL. Yes, it is.

Ms. FISHER. The entrances to those two rooms are about 8 feet apart; is that correct?

Ms. MARSHALL. I'm not very good at—

Ms. FISHER. Approximately?

Ms. MARSHALL. I guess approximately.

Ms. FISHER. During the period of time, July and August of 1995, when you were the primary user of the Book Room, was that during the time that Mrs. Clinton was working on her book in the room that's been marked 323?

Ms. MARSHALL. Well, I am the person who uses the room most often all the time. So it's not just during that specific time that I was a primary user. But when Mrs. Clinton was up there writing her book, there was—most of the occasions I was up there as well.

Ms. FISHER. Was she up there on a regular basis during July and August of 1995?

Ms. MARSHALL. I don't know what a regular basis really is, but she was up there on occasion during certain points and more often than others.

Ms. FISHER. Do you have a specific recollection during this period of time about how often she would be using the office?

Ms. MARSHALL. No, I don't have a specific recollection as to how often.

Ms. FISHER. Could you describe for us generally the layout of the Book Room?

Ms. MARSHALL. What the room looks like?

Ms. FISHER. Yes.

Ms. MARSHALL. Do you want me to refer to the diagram that is part of this packet as well?

Ms. FISHER. There is a diagram. If I could ask that it be put on the Elmo, and it's a diagram that was prepared by staff from the depositions we have taken and the different drawings that people have made. If there's any corrections that you have—

Ms. MARSHALL. I have my diagram that I drew as well that is part of this packet.

Ms. FISHER. We tried to make a clearer composite of your diagram.

Ms. MARSHALL. Well, it is not the way that I would have drawn it because the table, for instance, doesn't sit in the middle of the room. It's closer to the bookshelves that are on the west wall.

The CHAIRMAN. It appears that the table is not centered in the room, but it is a little closer to the bookshelves?

Ms. MARSHALL. It is actually just flush against the bookshelves. It is just against them.

The CHAIRMAN. Oh, really? OK. We'll note that your observation is at the time that you have spent and obviously you spend a great deal of time there, that the table is closer—you say it's flush; right?

Ms. MARSHALL. Yes, sir.

Senator SARBANES. Which bookshelves are you talking about?

Ms. MARSHALL. The west wall.

The CHAIRMAN. It says "bookshelves" on the bottom?

Ms. MARSHALL. And there's a little telephone area there.

The CHAIRMAN. Yes.

Ms. MARSHALL. If I could, can I refer off of mine because this one just seems kind of odd to me.

Ms. FISHER. Can we put her diagram up on the Elmo, please.

The CHAIRMAN. I tell you, it looks like something I would draw.
[Laughter.]

Ms. MARSHALL. I did not go to architecture or drawing school, so this is to the best of my ability.

Senator SARBANES. I am prepared to assume that you drew this diagram.

Ms. MARSHALL. I did draw this diagram.

Mr. BEN-VENISTE. Looks like a lawyer's diagram.

Ms. FISHER. Can you describe basically what's in the room?

Ms. MARSHALL. Yes. Basically what is in the room, if we start on the west wall, there are bookshelves. And this is during the time period of July, August 1995.

Ms. FISHER. Yes, that's correct.

Ms. MARSHALL. I put in the things that seemed to, in my recollection, be in the room at that time. There are bookshelves on the west wall and those are filled with various picture books, history books, and some larger books; and next to it, to the right of it, is a freestanding sort of connected table, and on top of that is a typewriter. A typewriter has been there most of the time. The telephone sits on there. There was sort of a Christmas candle that has been there for a long period of time.

And as we go around the room, there's an entranceway into the Linen Room where most of the linens are kept for both public and private functions, also some steaming and ironing goes on in that room. Then on the south side of the room are some more bookshelves and those again are stacked with various books, and the bottom part of the shelf there was some cassette tapes and a broken cassette holder, little black box cassette holder that was broken for some time, and underneath it there was a box filled with books and various other items.

Next to that was a cart, a rolling cart that has Chelsea's old computer on it, and on the bottom shelf there was that old printout computer paper with the holes on the side. Next to that is the entrance to the Exercise Room. You have to sort of go through two corridors to actually get to the actual exercise area.

Then on the east wall is another bookshelf and again, it has a variety of books, history books, and I think that there are psychology books on those shelves. And underneath there, there's some more boxes—not underneath, but against those shelves there's some more boxes. There was a box there and a lamp, one of those lamps where the light goes upward.

Ms. FISHER. OK.

Ms. MARSHALL. Then you reach the entrance into the Main Hallway. That's the one door that Gary was referring to.

Ms. FISHER. Is there an automatic closer on that door or does that door generally stand open?

Ms. MARSHALL. Sometimes we prop it open with one of those little wooden wedge things, but if you didn't, it would close.

Ms. FISHER. Besides yourself, during the period of July and August 1995, who else used the Book Room on a regular basis?

Ms. MARSHALL. Who used the Book Room on a regular basis?

Ms. FISHER. Yes.

Ms. MARSHALL. People just pass through. It is more like a passageway. People would walk through from the hallway that leads to the secondary elevator out to the Main Hallway or into the Exercise Room or into the Linen Room. It's more used as a passageway.

Ms. FISHER. So basically, for example, there would be construction workers that would pass through the room?

Ms. MARSHALL. Oh, yes.

Ms. FISHER. And the residence staff?

Ms. MARSHALL. Yes.

Ms. FISHER. And possibly house guests and the First Family?

Ms. MARSHALL. House guests, friends of house guests, family, friends of family.

Ms. FISHER. Other than passing through the Book Room, was anyone else working there on a regular basis or have a reason to be there on a regular basis?

Ms. MARSHALL. Not that I can recall, no.

Ms. FISHER. I'd like to ask you, Mr. Freemyer, a couple questions about the construction workers and the outside contractors that were there in the summer of 1995. There was some construction work going on in the residence at that period of time, wasn't there?

Mr. FREEMYER. Yes, there was.

Ms. FISHER. The construction workers or the outside contractors who were working in the residence, these individuals had to check in with your staff before entering the residence; correct?

Mr. FREEMYER. They would check with the National Park Service initially who administers the major construction projects. They, in turn, would check with us and request admission into certain areas to accomplish work.

Ms. FISHER. Those individuals would be escorted by Secret Service Officers—

Mr. FREEMYER. That's correct.

Ms. FISHER. —into the residence?

Mr. FREEMYER. Yes.

Ms. FISHER. Your staff is responsible for ensuring that these outside contractors and construction workers do not touch or disturb materials in the residence; is that correct?

Mr. FREEMYER. Our staff aids in that. The Secret Service really provides the escorting service and they have a responsibility, certainly, to keep an eye on the construction workers. Our staff does very little of the actual escorting.

Ms. FISHER. Your staff would give these workers an orientation talk, I believe you described that in your deposition, and tell them things about such as confidentiality concerns for the First Family's privacy?

Mr. FREEMYER. That's correct.

Ms. FISHER. And that would include telling them not to remove documents or to pick-up documents or to move documents from one place to another?

Mr. FREEMYER. Every construction project we do an orientation speech, if you will, and the idea is to sensitize the worker to the historic aspect of where they're working, ask them to be sensitive to the First Family, that they live there, that it's their home, to ask them to use common sense in terms of the language they might use, the way they conduct themselves, and certainly to not look at anything beyond what they need to accomplish their work.

Ms. FISHER. And not to move any documents from one place to another?

Mr. FREEMYER. That's correct.

Ms. FISHER. They must get authorization to move anything?

Mr. FREEMYER. They're not allowed to move anything.

Ms. FISHER. Even a magazine, for example?

Mr. FREEMYER. Even a magazine.

Ms. FISHER. In addition, they couldn't bring anything like a pile of documents into the residence; is that correct?

Mr. FREEMYER. That's correct.

Ms. FISHER. In fact, I believe you testified at your deposition that violation of this would be cause for removal?

Mr. FREEMYER. If somebody did something that was that serious, yes, absolutely.

Ms. FISHER. Now, Mr. Walters, you oversee the White House residence staff; is that correct?

Mr. WALTERS. That's correct.

Ms. FISHER. And do you give the White House residence staff a similar orientation talk about confidentiality concerns and moving materials around in the White House residence?

Mr. WALTERS. That's correct. I do that specifically before we hire anybody.

Ms. FISHER. Am I correct that moving documents around in the residence without specific direction would be cause for dismissal?

Mr. WALTERS. That's correct.

Ms. FISHER. That would include placing a document somewhere or moving it from one place to another.

Mr. WALTERS. Unless they were directed to do so, yes.

Ms. FISHER. Mr. Walters, I believe that you testified at your deposition that it would be highly unlikely that the residence staff would place records or documents into the Book Room without specific direction; is that correct?

Mr. WALTERS. That's correct.

Ms. FISHER. Mr. Freemyer, would you also say it would be highly unlikely for the outside contractors or construction workers to place documents somewhere in the residence?

Mr. FREEMYER. That's correct.

Ms. FISHER. I would like to direct your attention to these Rose Law Firm billing records. And specifically, Ms. Marshall, do you recall seeing these records prior to January 1996, these records?

Ms. MARSHALL. No, I do not.

Ms. FISHER. Did you put these records into the Book Room?

Ms. MARSHALL. No, I did not.

Ms. FISHER. Did you move them around the Book Room?

Ms. MARSHALL. I haven't ever seen them before.

Ms. FISHER. Mr. Walters, prior to January 1996, did you ever see these Rose Law Firm billing records in the White House residence?

Mr. WALTERS. No, I did not.

Ms. FISHER. Did you put these documents into the Book Room?

Mr. WALTERS. No, I did not.

Ms. FISHER. Mr. Freemyer, prior to January 1996, did you ever see these Rose Law Firm billing records?

Mr. FREEMYER. No, I did not, but I believe it was actually February.

Ms. FISHER. February 1996 when you saw them?

Mr. FREEMYER. Yes, just this week.

Ms. FISHER. But you did not put these documents into the Book Room, did you?

Mr. FREEMYER. No, I did not.

Mr. CHERTOFF. Ms. Marshall, the Exercise Room leads off the Book Room; right?

Ms. MARSHALL. Yes, it does.

Mr. CHERTOFF. Who uses the Exercise Room?

Ms. MARSHALL. A variety of people use the Exercise Room. House guests when they spend the night and sometimes when they have friends in, they'll use the Exercise Room—

Mr. CHERTOFF. Let me stop you. When you say when they have friends, you mean when the house guests have friends in?

Ms. MARSHALL. Yes, sir.

Mr. CHERTOFF. Or when the Clintons have friends in?

Ms. MARSHALL. Well, both. When the house guests' friends are over and when the Clintons' friends are in, they will use the Exercise Room. The Exercise Room is pretty much available to just about anyone who wants to use it.

Mr. CHERTOFF. Well, no, you don't really want to say that. That's not available to tourists.

Ms. MARSHALL. House guests who are in the room, friends of house guests, family members, friends of family members.

Mr. CHERTOFF. When you say "family members," you mean Clinton family members?

Ms. MARSHALL. Yes, sir.

Mr. CHERTOFF. So these would be people who are in the area at the specific invitation of the Clintons?

Ms. MARSHALL. Who are on the third and second floor, yes.

Mr. CHERTOFF. But in terms of the use of the Exercise Room, the people who would be using the Exercise Room are people who are guests or friends who are invited in by the Clintons?

Ms. MARSHALL. Yes.

Mr. CHERTOFF. It's not something, for example, that people who are working on the staff go up and use the Exercise Room there?

Ms. MARSHALL. There have been staff members who have used the Exercise Room.

Mr. CHERTOFF. At the invitation of the Clintons or do they come and go as they please in the Exercise Room?

Ms. MARSHALL. They have asked on occasion if they can use it, but not on the specific occasion that they do use it.

Mr. CHERTOFF. It's always whoever goes in and out is someone—I mean, this is the personal area in which the Clintons live; right?

Ms. MARSHALL. The second and third floor.

Mr. CHERTOFF. Right?

Ms. MARSHALL. Yes, that is the personal residence of the First Family.

Mr. CHERTOFF. This is the Exercise Room that is available to the Clintons if they want to use it?

Ms. MARSHALL. Yes, it is.

Mr. CHERTOFF. It is not the White House gym, which is a different type, in a different location, for the use of the general staff at the White House?

Ms. MARSHALL. It is not the White House gym, no.

Mr. CHERTOFF. I would like to ask Mr. Freemyer—I'm sorry, Mr. Walters, I would like to put up Deposition Exhibit 1 from Huber. Do you have that in front of you?

Mr. WALTERS. I do, sir.

Mr. CHERTOFF. You were shown this in your deposition. Do you remember that?

Mr. WALTERS. I don't believe I was, sir.

Mr. CHERTOFF. I'm sorry, I've got the wrong one. I meant to show you the original sketch we put up, which was the one that the staff put together. I don't know if we have a number for it. OK, you have this one in front of you?

Mr. WALTERS. Yes, sir. This document is one that's been changed from the one that I saw in the deposition.

Mr. CHERTOFF. What is the difference?

Mr. WALTERS. The dimensions of the room have been changed, and some of the changes that I made to that drawing are also made on here, giving a directional compass, if you will, north, east, south, and west.

Mr. CHERTOFF. So you were shown an earlier draft of this chart and you made some suggestions about changes and this incorporates your suggestions about changes?

Mr. WALTERS. That's correct.

Mr. CHERTOFF. To be quite clear, so we are going to eliminate again people who might have put or moved records there. Ms. Marshall, you did not take billing records and put them on the table in the Book Room, did you?

Ms. MARSHALL. No, I did not.

Mr. CHERTOFF. Mr. Walters, you didn't put billing records on the table in the Book Room, did you?

Mr. WALTERS. No, sir.

Mr. CHERTOFF. Mr. Freemyer, you didn't put billing records on the table in the Book Room?

Mr. FREEMYER. No, sir.

Mr. CHERTOFF. I'm going to direct this to Mr. Walters and Mr. Freemyer, the construction workers who were in the vicinity in the White House during the summer of 1995 would have been under specific instructions not to simply move documents or to take documents that were in the White House from one place or the other?

Mr. FREEMYER. That would have been their instructions.

Mr. WALTERS. Right.

Mr. CHERTOFF. That would also be the standing instruction for all members of the executive staff such as the butlers or the people who perform maintenance services or other things in the White House; is that right?

Mr. WALTERS. That's correct.

Mr. FREEMYER. Right.

Mr. CHERTOFF. That instruction also extends to not taking documents in from outside and leaving them in the White House?

Mr. WALTERS. Yes, sir.

Mr. CHERTOFF. To do that is to put yourself at risk of being fired; right?

Mr. FREEMYER. Absolutely.

Mr. WALTERS. Yes, sir.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I'm going to forbear, but I'm very tempted to ask each of these witnesses whether they put billing records on the table in the Book Room just in order to get it clear here. I don't know how many times we have to ask that question and get an answer to it.

Ms. Marshall, I wasn't clear on one answer you gave. Did you say that staff, on occasion, used the Exercise Room?

Ms. MARSHALL. Yes, sir, I did.

Senator SARBANES. If I were a staff person there who used the Exercise Room, would I have to get permission every time I did it, or would I sort of ask once and then be able to use the Exercise Room thereafter?

Ms. MARSHALL. Ask once and then be able to use the Exercise Room when available when you have time.

Senator SARBANES. When it didn't conflict with anybody else?

Ms. MARSHALL. Yes.

Senator SARBANES. So there would be staff who could use the Exercise Room or who were using the Exercise Room, but may have asked some time ago for permission to do so; is that correct?

Ms. MARSHALL. Yes, sir.

Senator SARBANES. Who would they ask permission of?

Ms. MARSHALL. Well, they might come to me and ask me to ask the First Family or might ask them directly.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Marshall, I understand that there had been some degree of renovation and work done at the White House during the summer of 1995; is that correct?

Ms. MARSHALL. Yes, it is.

Mr. BEN-VENISTE. Could you give us a summary of what that work entailed?

Ms. MARSHALL. Well, there are two projects that I recall specifically while I was working in the Book Room: One was reconstruction—part of the HVAC system. They had to gain access through a cubbyhole in the Exercise Room, "they" being the construction workers. They had to move a TV console out of the way. They went down into this cubbyhole area, and I only recall that specifically because the wallpaper, I believe, was ripped a little bit so we had to replace the wallpaper. They were in there for a bit of time.

The other project that I recall is in the Book Room. I was sitting in the Book Room, and you would hear all the time this very loud noise above you while the construction workers were walking and drilling and doing their various duties. And this one time I heard a very loud noise above me, and all of a sudden paint chips and plaster chips started to fall on my head and I ran out of the room. I went downstairs and I told the Ushers that the ceiling was coming in, and I got very nervous because I thought one of the guys was going to fall in on me. And if you saw these guys, they are pretty big, they are big construction workers—

Mr. BEN-VENISTE. I have seen construction workers, yes, and most of them are big.

Ms. MARSHALL. No one ever came through, thank goodness, but there was paint and plaster chips and they had to repair this hole that was in the ceiling.

Mr. BEN-VENISTE. When was that?

Ms. MARSHALL. Latter part of July.

Mr. BEN-VENISTE. We had that here, too, the sensation that the sky was falling from time to time. But yours was more literal, I take it?

Ms. MARSHALL. Yes.

Mr. BEN-VENISTE. Things were going bump there at the White House with the—when you say HVAC, the heating, ventilation, and the air conditioning system, as we understand from Ms. Huber's testimony, had to be replaced or renovated or something was going on with that; is that correct?

Ms. MARSHALL. Yes.

Mr. BEN-VENISTE. Mr. Walters, could you be more specific about what work was actually being done or should I ask Mr. Freemyer?

Mr. WALTERS. We are both very familiar with it. It has been going on now for 2½ years. It's a replacement of the Executive Residence heating, ventilating, and air conditioning system that dates back to the 1950's to the renovation of the house. It's that entire system that's being replaced, which entails some type of activity in almost every area of the White House.

Mr. BEN-VENISTE. So during the summer months of 1995, there was some dislocation concerning these renovations that were being made?

Mr. WALTERS. Yes, sir.

Mr. BEN-VENISTE. The considerable amount of noise and the incident Ms. Marshall has described, I take it you're familiar with?

Mr. WALTERS. Yes, sir. I think it is a little bit larger in Ms. Marshall's mind—

Ms. MARSHALL. He wasn't there. I was. It certainly seemed as though someone was coming through.

Mr. BEN-VENISTE. I guess the sensation of having the ceiling fall on you is more real when you experience it than if it's described to you. But in any event, there were things being moved around. There was dislocation. I think Ms. Huber said that a closet which had been previously accessible had to be walled off and taken for purposes of locating a duct there?

Mr. WALTERS. That's correct.

Mr. BEN-VENISTE. Where was that vis-à-vis Carolyn Huber's work space?

Mr. WALTERS. The closet was what was referred to earlier as Mrs. Clinton's office. It's in the northeast corner of that room.

Mr. BEN-VENISTE. Is that the same closet—have you been following these proceedings that have been going on for some while, is that the same closet where Ms. Huber had directed that certain documents be stored?

Mr. WALTERS. I do not know that, sir.

Mr. BEN-VENISTE. Do you know, Ms. Marshall?

Ms. MARSHALL. That Ms. Huber directed certain documents—

Mr. BEN-VENISTE. That the documents which Ms. Huber directed be stored in a closet, was it the same closet that was taken by this HVAC—

Ms. MARSHALL. I know Ms. Huber at some point had filed boxes in that closet.

Mr. BEN-VENISTE. In that closet, OK.

Can you tell us your observations of Ms. Huber's use of the Book Room during the summer of 1995?

Ms. MARSHALL. Me?

Mr. BEN-VENISTE. Yes.

Ms. MARSHALL. Well, I can't say with any exact recollection if she was ever in the room. She may have passed through the room, but while I was working in there, I don't recall her doing any specific work at all.

Mr. BEN-VENISTE. What was that table used for?

Ms. MARSHALL. The table—

Mr. BEN-VENISTE. In the Book Room.

Ms. MARSHALL. There are two actually. There's a cart generally that's rolled in and it could be a flatbed cart or it could be a two-tiered cart, and that generally has follow-up things on it, things from trips, and I mostly use that cart. The table that's against the bookshelves has books stacked on it, newspaper clippings, magazines, things of that sort. Most of the items on there are more Carolyn's library project. She was trying to put together a library system in the Book Room and throughout the house; and from what I understand, it's not completed yet.

Mr. BEN-VENISTE. So that Ms. Huber had occasion in the summer of 1995 to use that table sort of as a staging area or collection area for her projects?

Ms. MARSHALL. Yes.

Mr. BEN-VENISTE. Can you tell us the general condition of that table and the area around it?

Ms. MARSHALL. Well, my scratch marks on my diagram sort of show, I think, to a certain degree that it was a messy table. It had things piled. There weren't exactly stacked—if you can make it out, that's a table against that wall. And those are books and magazines and newspaper things—newspaper items, and there were boxes that were underneath. Those as well were filled with books and newspaper items and clips and things of that sort. And around it, generally when gifts or follow-up items would come off the road or be sent over from the West Wing or from the gift unit, those are put in bags and sort of set around the room.

Mr. BEN-VENISTE. So the general condition of the room, would you say that this was a neat and tidy room, or was it one which was often found in disarray?

Ms. MARSHALL. I would say it is one that is often found in disarray. You can compare it to your mud room. It's the place where you put things down while you're passing on through and you say I am going to get back to that stuff in a few minutes or hopefully a few days and, you know, fix it up and tidy it up, but to sort of place stuff down there for a while.

Mr. BEN-VENISTE. So was it a place of sort of transition, materials would come and go?

Ms. MARSHALL. Yes, but they would come and go for a variety of reasons. Whenever there was a project going on in another room, if there was something that was taking place in the room that is referred to now as Mrs. Clinton's office, all the items, boxes were being moved into the Book Room so that construction and things of that sort could go on in that room. If something was happening in the Book Room, all the items might be moved out and moved

into another room. That was sort of how boxes and items were handled around there.

Mr. BEN-VENISTE. I guess anyone who has lived through a renovation would know the process of moving from one place to another and another as the work was being completed. And this, Mr. Walters, was going on for some considerable period of time, right?

Mr. WALTERS. That's correct.

Mr. BEN-VENISTE. Was there ever a period of time that you recall in 1995 where this table was sort of cleared off, that there was a period of orderliness?

Ms. MARSHALL. In all of 1995 or July and August 1995?

Mr. BEN-VENISTE. Well, July and August.

Ms. MARSHALL. No.

Mr. BEN-VENISTE. How about earlier in the year?

Ms. MARSHALL. No.

Mr. BEN-VENISTE. We are told that the Book Room was then appropriated for use in connection with the actual writing of a book?

Ms. MARSHALL. Yes.

Mr. BEN-VENISTE. Is that correct?

Ms. MARSHALL. Yes, two different meanings.

Mr. BEN-VENISTE. The Book Room then had a double meaning?

Ms. MARSHALL. Yes.

Mr. BEN-VENISTE. And at that point, a new cast of characters was introduced into that room and we probably don't need to deal with that further, but I take it the character of what was going on in there changed at that point as it was assigned to the use of additional people?

Ms. MARSHALL. Yes.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. Just a couple of quick ones. Do you know when the book writer started to use that room, Mr. Freemyer?

Mr. FREEMYER. I'm sorry, could you repeat that, sir.

The CHAIRMAN. Do you know when the book writers, the people who were helping prepare Mrs. Clinton's book, when they started to use that room?

Mr. FREEMYER. I don't recall specifically. I think probably June, July, somewhere in that area, sir.

The CHAIRMAN. Suppose I said early August.

Mr. FREEMYER. Pardon me?

The CHAIRMAN. Were they using that room in early August?

Mr. FREEMYER. Yes, sir.

The CHAIRMAN. And I think we'll find that that is the case, but we can try to establish that later. I don't think it is a great point here, but we'll get to that.

Mr. Walters, have you ever seen any other staff members, other than Ms. Marshall, use the Exercise Room?

Mr. WALTERS. No, I've never seen any other members use that.

The CHAIRMAN. Mr. Freemyer, have you ever seen any other staff members other than Ms. Marshall use the Exercise Room?

Mr. FREEMYER. No, sir, I have not.

The CHAIRMAN. Ms. Marshall, you indicated that other staffers use the Exercise Room. You are not suggesting on a regular basis, are you?

Ms. MARSHALL. Again, I don't know what a regular basis is—

The CHAIRMAN. Once a week, twice a week?

Ms. MARSHALL. No, what I suggested is that it is open and available if they request to use it.

The CHAIRMAN. No, you didn't say that. You said that staffers use the Exercise Room.

Ms. MARSHALL. Yes.

The CHAIRMAN. I'm going to get a little more specific now. What other staffers and how often do they use them? Do you know a staffer or staffers who use the Exercise Room on a regular basis, twice a week, three times a week? Do you know of any?

Ms. MARSHALL. I did, yes.

The CHAIRMAN. Who did you know who used it on a regular basis?

Ms. MARSHALL. There was a staff person who—

The CHAIRMAN. Who?

Ms. MARSHALL. A staff person by the name of Helen Dickey.

The CHAIRMAN. When did Ms. Dickey use the Exercise Room? Is this regular that she used the Exercise Room?

Ms. MARSHALL. Yes. She regularly used the Exercise Room.

The CHAIRMAN. How often?

Ms. MARSHALL. I don't know how often but certain evenings when I was up in that area, she would be up there on the treadmill or on the bike.

The CHAIRMAN. Did she use it in August 1995?

Ms. MARSHALL. I don't recall—no, I don't recall.

The CHAIRMAN. It is not customary for the staff to use the Exercise Room?

Ms. MARSHALL. Is it customary for all staff?

The CHAIRMAN. For staff. I want to ascertain, you are one of the staff and you have used the Exercise Room; correct?

Ms. MARSHALL. Yes, sir.

The CHAIRMAN. On a regular basis; correct?

Ms. MARSHALL. When I get the opportunity, yes, sir.

The CHAIRMAN. So we've established that you're one of those, but we've also established through your testimony that you did not see the papers so you couldn't have put the papers there; right?

Ms. MARSHALL. Yes, sir.

The CHAIRMAN. Now, who else, what other staffers used the Exercise Room that you know of, and do you know of any who used it during August?

Ms. MARSHALL. I can't state with any specificity any staff that used it during August.

The CHAIRMAN. OK. See, Ms. Dickey, I think it's important—

Ms. MARSHALL. I'm Ms. Marshall.

The CHAIRMAN. Ms. Marshall, excuse me. I think it's important that we be careful because what we're attempting to do is to find out who actually did have access, but who did come into the room. We know that construction workers came in, but they were under strict supervision and there were orders as to what they could and couldn't move with the threat or with the proviso of dismissal, and we know who worked for the Ushers, et cetera, similarly were instructed.

But you see, if we leave it open, that all staff has access, then we create something that if indeed you had one person, Helen

Dickey, who's used—and she may or may not have used it. You're not sure whether she used it in August. We'll ascertain from her. But you saw her use it, but you're not aware of any other staff during August—

Ms. MARSHALL. No, I am not.

The CHAIRMAN. During a 2-week period of time from the beginning to the second week in August, are you aware of any guest who may have used the Exercise Room?

Ms. MARSHALL. I can't state names with specificity, but there were guests, house guests going in and out.

The CHAIRMAN. There were house guests, but you're not certain which, if any, of them used the Exercise Room?

Ms. MARSHALL. Well, I know there were house guests going back and forth, and I can hear the whirring of the various machines, but I didn't go back there to see exactly who was on the treadmill or who exactly was on—

The CHAIRMAN. Would that hold true—you knew there were guests and you could hear—and I am trying to be a little specific here—

Ms. MARSHALL. Sure.

The CHAIRMAN. —and you heard the exercise machine going, the treadmill. Did you know they were a guest, or could it have been Mr. Clinton or Mrs. Clinton?

Ms. MARSHALL. No, I don't know with any certainty, but it was generally during the middle of the day when I was doing my work and Mrs. Clinton—if I was up there, Mrs. Clinton would be in her office, so it wouldn't seem as though Mrs. Clinton would be back there exercising.

The CHAIRMAN. We'll get the log and with some specificity as it relates to guests in July and August and we'll then begin to examine those who may have used the Exercise Room. But again, I think the universe of people we're talking about who may have had opportunity to use this was bigger than those who actually did, and even that universe is quite small.

What is the distance between the main door to the Book Room and the door to the Exercise Room, if you were to approximate?

Ms. MARSHALL. Again, I'm not very good at distances.

The CHAIRMAN. Let me ask our architect, Mr. Freemyer. Would you give us—

Mr. FREEMYER. I would say it's about 6 feet, sir.

The CHAIRMAN. Six feet. All right. Well, I think you've answered all our questions. But let me ask you one other question. You don't have any idea or any knowledge as to who put the documents on the table, do you, Ms. Marshall?

Ms. MARSHALL. No, I do not.

The CHAIRMAN. Mr. Walters, the same thing.

Mr. WALTERS. No, Mr. Chairman.

The CHAIRMAN. I know we asked you directly, but I am going to ask you, Mr. Freemyer.

Mr. FREEMYER. No, sir, I do not.

The CHAIRMAN. I am not going to pursue this. I think we have eliminated certainly the three of you. We have eliminated people that you may have knowledge of who were in the vicinity who may have indicated to you somehow or some knowledge to you—how it

must have gone in there. I think the construction workers we can fairly, safely assume that it was highly unlikely that they would have put a document there. The executive staff at the residence, I think, is rather unlikely given the incredible restrictions. I mean, they are told if you move papers, is that right, without order, Mr. Freemyer, that's a subject you can be dismissed for?

Mr. FREEMYER. Yes, sir, they know not to move things.

The CHAIRMAN. Mr. Walters, the same with people under your charge?

Mr. WALTERS. Yes, sir.

The CHAIRMAN. That's embodied in them, that's part and parcel of their creed?

Mr. WALTERS. Unless they're instructed to do so.

The CHAIRMAN. I want to thank you.

Senator SARBANES. I have one question. Mr. Freemyer, when the Chairman said the construction workers are under strict supervision or strict scrutiny, what do we mean by that?

Mr. FREEMYER. I believe what he means and what I would mean by that is that the construction workers are escorted by the Secret Service at all times when they're performing work in the residence, so there is actually a person there observing the workers while they are working.

Senator SARBANES. Suppose you have three or four workers working in two or three rooms. You have a Secret Service person with each worker?

Mr. FREEMYER. It would really depend on the nature of the work. Sometimes there would be multiple escorts. Sometimes there might be a single escort and he would position himself between the two areas of work where he could observe them simultaneously.

Mr. BEN-VENISTE. That would be a function of what resources were available and what jobs were being done?

Mr. FREEMYER. That's correct.

Mr. BEN-VENISTE. Now, Ms. Marshall, did you ever notice that despite the creed of the construction workers at the White House, that things got moved from time to time during this construction process?

Ms. MARSHALL. Yes, I think it's sort of the necessity of what was going on.

Mr. BEN-VENISTE. So the issue is not whether things were moved around. It's a question of whether people were observed, whether there was discussion with other supervisory personnel about moving the objects and then moving them back, but there is no question that things got moved around during this period of time?

Mr. WALTERS. If I can, Mr. Ben-Veniste, the thing that needs to be made clear, I think, is the things that were removed were being moved by the appropriate people, by either our staff who are charged with moving the historic furniture or pieces of personal belongings or whatever is in that area. A construction worker would not just come up and move something.

Mr. BEN-VENISTE. Did Ms. Huber from time to time direct people to move things around as far as you recall, Mr. Walters?

Mr. WALTERS. Yes. She requested us to move things for her at times.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. All residence staff do have security clearances?

Mr. WALTERS. Yes, sir, that's my understanding from the Secret Service and the White House Security Office.

The CHAIRMAN. Senator Grams, did you have any questions?

Senator GRAMS. No, thank you.

The CHAIRMAN. I want to thank the witnesses for their cooperation and for their testimony. It is important, because again, we are attempting to ascertain how did the papers come there and by eliminating, and I think it's absolutely safe with respect to all three of you, we eliminate the three of you and I think it is safe to conclude that staff would not accidentally place these documents. They are given the strict prohibitions and limitations and directions and constraints that they have operated on over the years, so we have to try to do the best we can to narrow the universe down. But I want to thank you for your cooperation, and I also make note of the fact that we get out of here with some degree of humanity. We have a little bit left in the day, and I want to—

Senator SARBANES. Bring on the next panel, Mr. Chairman.

[Laughter.]

The CHAIRMAN. I want to commend my colleague because I believe were it not for his insightfulness earlier in the day, we would have been here much later, still with the first panel, and not gotten nearly the cooperation or the information that we have, and would have been bogged down. So I thank Senator Sarbanes and Mr. Ben-Veniste for your very helpful suggestions in how to deal with our first panel.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

The CHAIRMAN. We stand in recess until Tuesday at 10:30 a.m. [Whereupon, at 3:50 p.m., the hearing was adjourned, to reconvene at 10:30 a.m., on Tuesday, February 13, 1996.]

[Appendix supplied for the record follow:]

Whitewater

8/7/99

*

IV Madison Guaranty not getting special treatment
 - Most important thing to prove next week

V PB. DL. Waldman → to Ark to meet C Beverly Bassett
 Try to poke holes in their story



- Try to get ind. validation from securities attorney
- Search of Ark regulations

Boxes going to some prosecutorial authority anyway

on - Mtg of attys outside of WH

S 020432

Ben Bassett - in so e..... up
 if we e... that up, we're done
 let's not take it to death - let's just get it done

H- We can't send PB.M. Ma
- it will come out

Wen by item → make sure her story is OK

T. Bdale? - in Lindsey's room
Skip? → with pass
PB friend my lawyer?

Quran - arms length

residence.

1161 that she found them and just threw them in a box of
1171 things that she was collecting in that room to bring
1181 back over to her East Wing office to sort through,
1191 and determine what to do with.
1201 And then she said, and she said she hadn't
1211 looked at them. Then at some point she said she knew
1221 they were Madison records or she knew they were
Rose

Page 16

111 Law Firm records.
121 And so we asked her, and I don't remember
131 who exactly was doing the questions, we were all
141 talking to her.

151 Q Did she indicate when she knew they were
161 Rose Law Firm records?

171 A Well, I'm about to get to that.
181 First she said she didn't look at them.
191 she just threw them in the box.
201 Then she said something about them knowing
211 at the time that they were Rose Law Firm records.
221 So we asked her, wait a minute, I thought
231 you didn't look at them. You know, did you look at
241 them then?

251 And she said, well, having been the office
261 manager of the Rose Law Firm, I know what Rose
Law

271 Firm records look like, so I looked at them long
281 enough to identify them as Rose Law Firm records.
291 And I threw them in the box. But she said I didn't
301 look at them long enough to realize that they were
311 Madison billing records from '85 and '86.
321 So this conversation is occurring, you

Page 17

111 know, between the time we got there and the time we
121 moved into the next room. And had started going
131 through the records.

141 She's going through them page by page.

151 Q Did she say anything about the records as
161 she was going through them page by page?

171 A She pointed out the red handwriting and
181 identified that as Foster's handwriting. She
191 identified, she observed that everything about the
201 records was a copy except the original handwriting of
211 Vince Foster.

221 And she observed that some of the
231 handwriting was Mrs. Clinton's that appeared to
241 have

251 been placed there at the time the bills were prepared
261 in '85 or '86.

271 She may have identified other handwriting
281 on the bills but I don't remember. There may have
291 been a bookkeeper or somebody like that whose
301 handwriting she recognized that again looked like it
311 would have been placed on there in '85 or '86.
321 We looked at the materials for awhile.

331 Then I suggested to Kendall and Schuelke that we
step

Page 18

111 out in the hallway for a minute and talk about what
121 to do.

131 I talked about whether we should copy the
141 records, or whether there may be some interest in the
151 records that should require us to do something with
161 them before we copied them.

171 We discussed that for awhile, and then
181 concluded that because the records were under
191 subpoena by two different entities, maybe three, I
201 think the RTC had an outstanding subpoena as well,
211 and because they contained new information that
221 needed to be examined, that it was important to get
the copies made.

231 We talked about who should produce the
241 records. Whether Schuelke should, whether the
White

251 House should, or whether Kendall should. We talked
261 about that for, you know, ten minutes or so, and
271 concluded that Kendall would produce the records.

281 Q You mentioned there was discussion of
291 doing something prior to copying the records. Do you
301 recall precisely what that something would be?

311 A Well, I asked the question whether these

Page 19

111 records were records that there may be some interest
121 in fingerprinting at some point, and should we, you
131 know, reserve on copying or handling them. And that
141 was the question that we discussed and then decided
151 that the competing demands for these documents, as
161 well as the obligation to the clients to analyze
171 them, were compelling and we ought to get them
copied

181 promptly and turn them over as quickly as possible to
191 the Independent Counsel.

201 Q Was there any discussion of notifying the
211 Independent Counsel and asking the Independent
221 Counsel whether steps should be taken to preserve the
231 records with a minimum of fingerprints on them,
241 smudging and fingerprints?

251 A No.

261 Q Okay, go ahead with the narrative.

271 A I can't remember where I left off.

281 Q You were discussing the copying of the
291 records, and you decided that the countervailing
301 considerations required -

311 MR. WITTEN: That's not where she left
321 off. That's what she answered in response to your

Page 20

111 question.

121 THE WITNESS: I think I was trying to
131 remember what else we discussed.

141 Oh, we discussed whether we could get them
151 copied fast enough that night to turn them over to at
161 least the Independent Counsel that night.

171 I believe you got a full-sized set of
181 these documents as we began the copying process,
191 which you know happened in a different segment of
201 this evening. It became clear that we couldn't get
211 that whole process completed that night, but when we

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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 ROBERT J. GIUFFRÀ, JR., CHIEF COUNSEL
 PHILIP F. BECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR
 AND CHIEF COUNSEL

September 6, 1995

By U.S. Mail and Facsimile

Jane C. Sherburne, Esq.
 Special Counsel to the President
 The White House
 Washington, D.C. 20500

Dear Jane:

This follows up on our meeting of yesterday regarding the status of the White House's efforts to respond to the Special Committee's August 25, 1995 document request:

1. You have advised us that the White House will not be able to produce documents by the September 7, 1995 return date specified in the Committee's August 25th request. As we discussed, any delay by the White House in producing documents will impact negatively on the Special Committee's ability to conclude its investigation by February 1996. You have agreed to provide an estimate to the Special Committee of when the White House will be able to produce all documents responsive to the Committee's August 25th request. The Committee had hoped to begin depositions by mid-September.

2. The scope of the next round of hearings will almost certainly include matters specified in both Sections 1(b)(2) and (b) (3) of Senate Resolution 120. The Special Committee will not be in a position to determine which (b)(3) matters will be covered until after we have begun to review documents and to take depositions. It is therefore essential that the White House begin to produce documents responsive to both (b)(2) and (b)(3) matters as promptly as possible. As we discussed, requests (a) through (e) in the Committee's August 25th request correspond roughly to the matters specified in Section (b)(2) of Senate Resolution 120, and requests (f) through (l) correspond to (b)(3) matters.

3. You asked for further clarification of requests (a), (b), (e) and (h) of the Special Committee's August 25th document request. Documents responsive to requests (a) and (b) would include, inter alia, any and all records, within the possession, custody or control of the White House, regardless of format, including, but not limited to, e-mail, electronic

"dump files," memoranda, correspondence, notes, and records in any other medium, including drafts of any of the foregoing, that reflect, refer or relate to:

(a) any information gathered, prepared or developed by any employee, consultant or agent of the Resolution Trust Corporation ("RTC") relating to Madison Guaranty Savings and Loan Association ("Madison") or Whitewater Development Corporation ("Whitewater");

(b) any actual or potential RTC criminal referral relating to Madison or Whitewater, including, but not limited to, any communication, contact or meeting relating to any actual or potential RTC criminal referral relating to Madison or Whitewater;

(c) any actual or potential RTC civil action relating to Madison or Whitewater, including, but not limited to, any communication, contact or meeting relating to any actual or potential RTC civil action relating to Madison or Whitewater; or

(d) any communication, contact or meeting between January 20, 1993 and August 5, 1994, including, but not limited to, all records of telephone conversations or wire communications, relating to any subject, between:

(i) President William Jefferson Clinton, Hillary Rodham Clinton, or any present or former member of the White House staff, and

(ii) any present or former employee of the RTC, Lisa Aunspaugh, Dennie Beard, George Betts, Tom Butler, Paula Casey, Andrew Clark, Don Denton, John Flake, any present or former employee of Frost & Co., J.W. Fulbright, Eugene Harris, Bill Henley, David Henley, Jim Henley, Webster Hubbell, Marlin Jackson, Charles James, Jerry Jones, Dan Lasater, John Latham, any present or former employee of Maple Creek Farms, James McDougal, Lorene McDougal, Susan McDougal, Wali Muhammed, Sheffield Nelson, Robert Palmer, Judy Peacock, Charles J. Peacock III, R.D. Randolph, Beverly Bassett Schaffer, Mike Smith, Jim Guy Tucker, Chris Wade, Larry Wallace, Seth Ward, Betsey Wright, and Greg Young.

4. Documents responsive to request (e) would include, inter alia, any and all records, within the possession, custody or control of the White House, regardless of format, including, but not limited to, e-mail, electronic "dump files," memoranda, correspondence, notes, and records in any other medium, including drafts of any of the foregoing, that reflect, refer or relate to:

(a) any communication, contact or meeting, including, but not limited to, all records of telephone conversations or wire communications, between any present or former employee of the White House and any other person, including, but not limited to, the Department of the Treasury, the Office of Government Ethics ("OGE") or the RTC, relating to the report of the OGE to the Secretary of the Treasury, dated July 31, 1994 (the "OGE Report"), regarding White House-Treasury contacts concerning the RTC's resolution of Madison, and related transcripts of depositions conducted by the Inspector General of the Department of the Treasury; or

(b) all records of telephone or wire communications, including, but not limited to, phone logs, copies of message pads, and electronic or written records, relating to communications between June 1, 1994, and August 5, 1994, between members of the Office of the White House Counsel and any employee of the Department of Treasury (including, but not limited to, the Department's Inspector General) or the Office of Government Ethics.

5. Documents responsive to request (h) would include, inter alia, any and all records, within the possession, custody or control of the White House, regardless of format, including, but not limited to, e-mail, electronic "dump files," memoranda, correspondence, notes, and records in any other medium, including drafts of any of the foregoing, that reflect, refer or relate to:

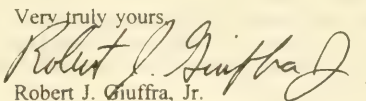
(a) the Rose Law Firm's representation of Madison; or

(b) the Rose Law Firm's representation of the RTC with regard to Madison.

* * *

To the extent that you require further clarification of any of the Special Committee's other requests, please let me know.

Very truly yours,


Robert J. Giuffra, Jr.
Chief Counsel

cc: Lance Cole, Esq.
Democratic Deputy Special Counsel

THE WHITE HOUSE

WASHINGTON

October 23, 1995

BY TELECOPY

Robert Giuffra, Chief Counsel
United States Senate
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Building
Washington, D.C. 20510-6075

Dear Bob:

Let's review the bidding: as far as we are aware, the White House has nearly completed its response to the Chairman's August 25, 1995 document request, and your subsequent expansions of his original request. Our compliance does not include certain material about which there had been outstanding cut-off date issues that were only resolved in your letter of October 17, 1995 or the new requests made in your October 17 letter. Although your October 17 letter raises new issues that require further discussion, we anticipate we will have essentially completed our response to it by October 30. To date, we have produced nearly 8,500 pages of White House records to the Committee.

You have made it extraordinarily difficult to accomplish this result. From the Chairman's original request made three months after the Senate adopted Sen. Res 120, you have led us through a thoroughly confusing labyrinth of embellishments, qualifications, and elaborations. Keeping pace with your shifting and expanding requests has consumed hundreds, if not thousands, of hours of work on the part of White House staff.

The cut-off date stated in your October 17 letter enables us to finish our response to the Chairman's original request. Your October 17 letter provides an answer to our longstanding request for a workable cut-off date with respect to documents related to (b)(3) of the Resolution, the so-called "Arkansas Issues." In fact, your cut-off date was precisely what we proposed to you during our meeting on September 21, 1995. Needless to say, had you agreed to the cut-off date then instead of nearly a month later, we would be that much farther along in getting you what you want.

Robert Giuffra, Chief Counsel
October 23, 1995
Page 2

Nonetheless, while waiting for your response to this question, we went ahead and provided the Committee more than 2,000 pages of primary source material that we had located in the White House (in addition to the material made public by the House Banking Committee this summer) related to the Arkansas Issues. With the benefit of the cut-off date, we will now begin production of materials prepared by White House staff related to the Arkansas Issues. If there are such materials that we would prefer to discuss with you before production, we will identify them on a log. As stated above, we are aiming to provide this material to you by Monday, October 30, 1995 -- which would be less than two weeks from the date you identified the cut-off date.

Your October 17 letter also responded to our longstanding request for guidance on an appropriate cut-off date with respect to documents related to (b)(2) of the Resolution, the so-called "Washington Issues." Again, while awaiting your response, we have been providing (to the extent the Committee did not already have it from White House document productions made in the summer of 1994) material created before March 4, 1994 that is responsive to Paragraphs (a) through (d) of the Chairman's August 25, 1995 request. We have asserted no privilege with respect to any of this material.

The August 5, 1994 cut-off date proposed in your recent letter, captures material created from March 4, 1994 (the date the Independent Counsel issued subpoenas to the White House for White House-Treasury "contacts" records) to the last day of the Committee's hearings on White House-Treasury contacts (also the date that Judge Starr was appointed to replace Robert Fiske as Independent Counsel). During this time period, the White House conducted an internal review of White House-Treasury contacts, prepared for Congressional hearings on that subject and responded to requests from the Independent Counsel. Given the sensitive and privileged nature of the material created in connection with each of these activities, we believe it appropriate to discuss whether the request can be narrowed in a manner that provides the Committee an opportunity to review the material necessary for its inquiry without compromising Executive functions.

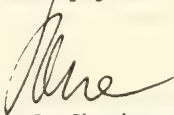
Your October 17 request for all responsive documents, up to the present moment, found in the files of the President, Mrs. Clinton, Lloyd Cutler (presumably while he was White House Counsel), Bruce Lindsey, and Margaret Williams is puzzling. Any material created after August 5, 1994 (to the extent such material even exists) would necessarily be a retrospective on the conduct that is the subject of the Committee's inquiry -- all of

Robert Giuffra, Chief Counsel
October 23, 1995
Page 3

which occurred prior to August 5, 1994 -- and have no probative value.

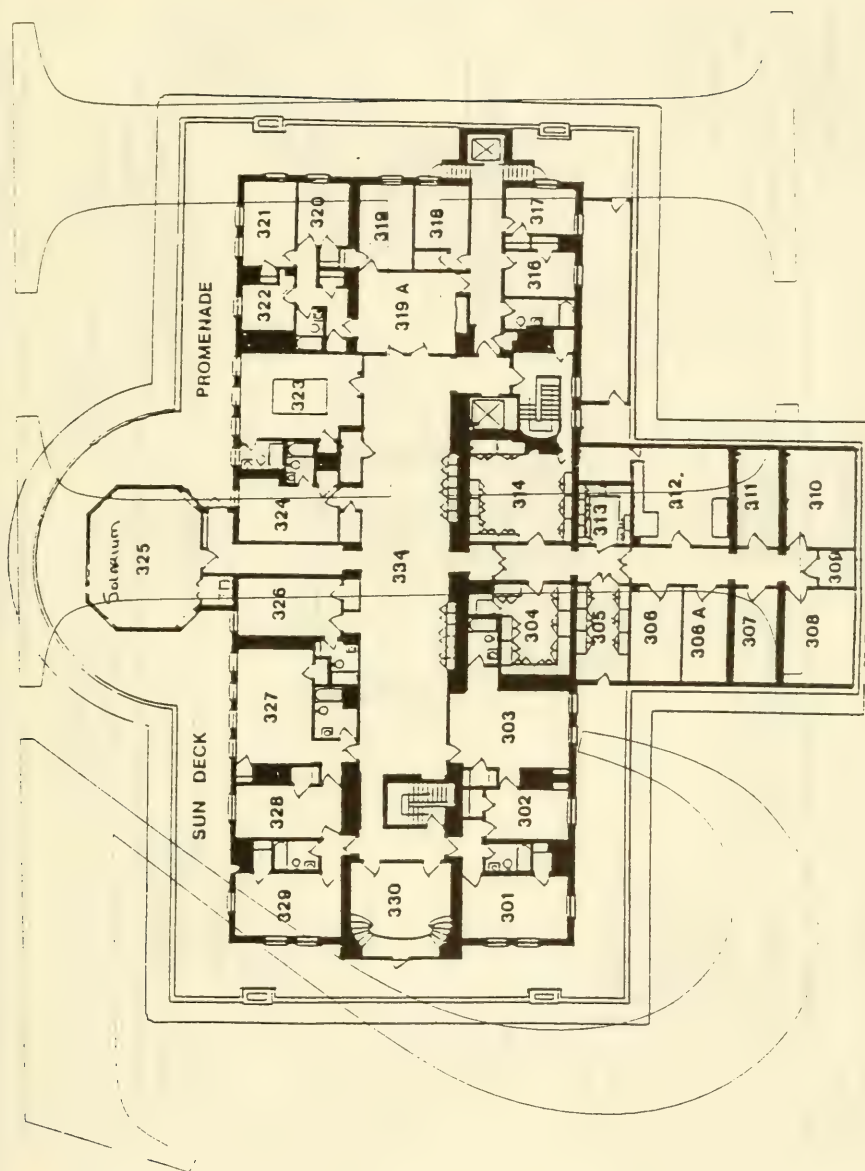
As you know, I have requested a meeting for Tuesday, October 24 with Mr. Chertoff and Mr. Ben-Veniste to discuss these requests and other issues raised by your October 17 letter. I am confident that good faith discussions about this material will produce an acceptable accommodation that satisfies the Committee's legitimate needs.

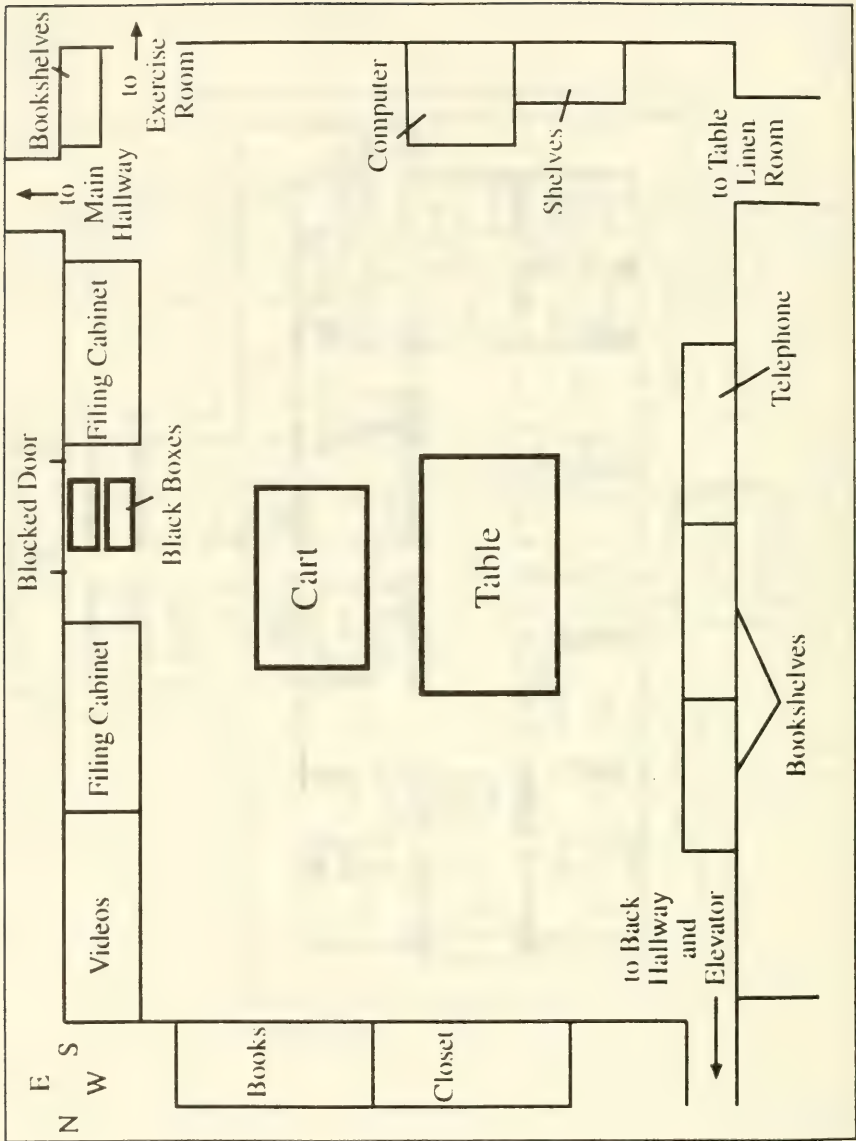
Sincerely yours,

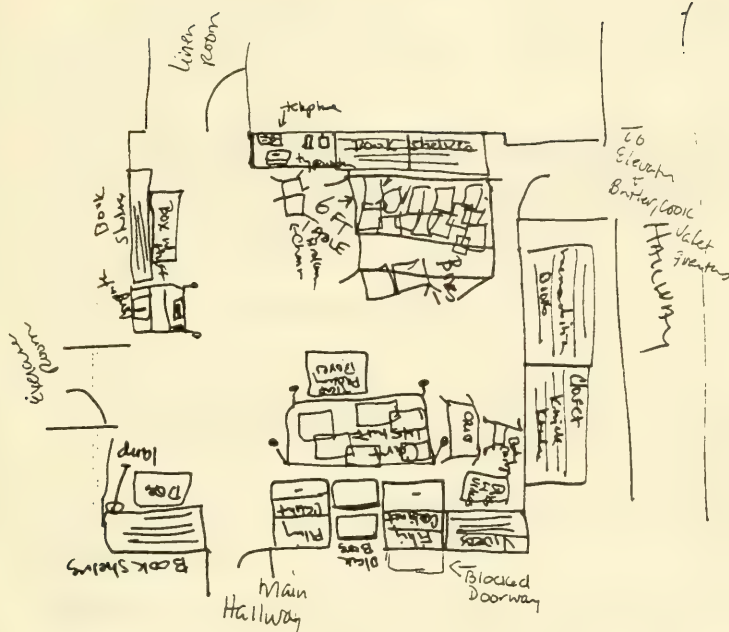
A handwritten signature in dark ink, appearing to read 'Jane C. Sherburne', written in a cursive style.

Jane C. Sherburne
Special Counsel to the President

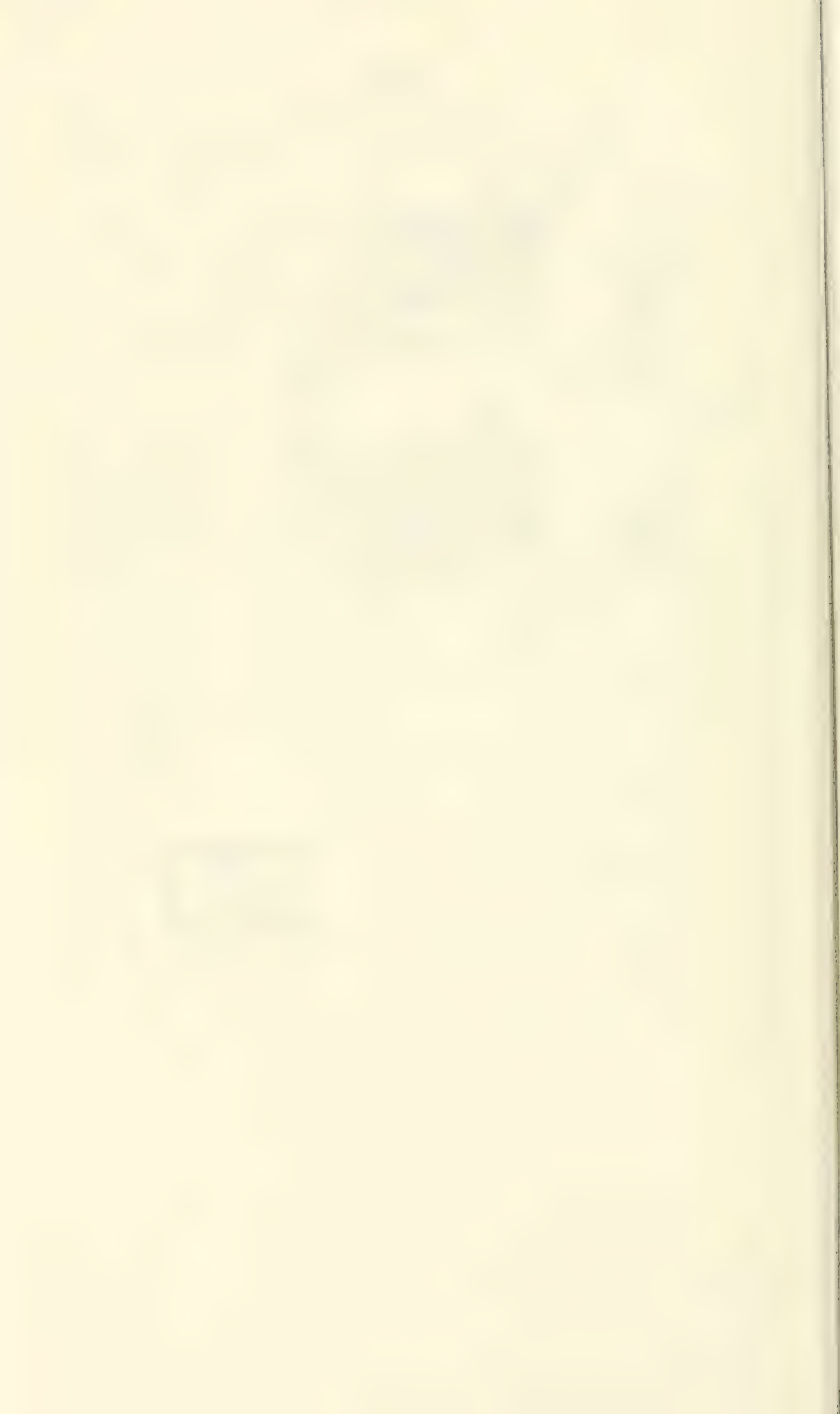
cc: Richard Ben-Veniste, Minority Special Counsel







DEPOSITION
EXHIBIT
Marshall 1
1-25-96 72



INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, FEBRUARY 13, 1996

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 10:39 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Do we have our witnesses?

The CLERK. They're on the way up.

The CHAIRMAN. While we are waiting for the witnesses, I will ask Senator Sarbanes if he has any opening remarks or comments that he would like to make at this time.

Senator SARBANES. No, thanks.

The CHAIRMAN. Ms. Hernreich, Mr. Bratton, would you stand for the purposes of taking the oath, please.

[Whereupon, Nancy Hernreich, Deputy Assistant to the President & Director of Oval Office Operations; and Sam I. Bratton, Chairman, Arkansas Public Service Commission; were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Ms. Hernreich and Mr. Bratton, if you have any statement that you would like to give to the Committee before we start, we would be very pleased to receive it.

Ms. Hernreich.

**SWORN TESTIMONY OF NANCY HERNREICH
DEPUTY ASSISTANT TO THE PRESIDENT &
DIRECTOR OF OVAL OFFICE OPERATIONS
FORMER SCHEDULING SECRETARY TO THE GOVERNOR**
Ms. HERNREICH. I don't, Mr. Chairman.

**SWORN TESTIMONY OF SAM I. BRATTON, JR.
CHAIRMAN, ARKANSAS PUBLIC SERVICE COMMISSION
FORMER COUNSEL TO THE GOVERNOR**
Mr. BRATTON. I don't, Mr. Chairman.

The CHAIRMAN. Then we will turn to Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. BRATTON, what's your current position?

Mr. BRATTON. I am Chairman of the Arkansas Public Service Commission.

Mr. CHERTOFF. Ms. Hernreich, what's your current position?

Ms. HERNREICH. I am Deputy Assistant to the President and Director of Oval Office Operations.

Mr. CHERTOFF. Now, I want to direct your attention to the mid-1980's, in particular, the period from 1984 to 1987. Mr. Bratton, what was your job then?

Mr. BRATTON. I was Counsel for Legal and Financial Policy in Governor Clinton's staff.

Mr. CHERTOFF. Ms. Hernreich, what was your position during that period of time?

Ms. HERNREICH. Starting in 1985, I was the Scheduling Secretary for Governor Bill Clinton.

Mr. CHERTOFF. Now, Mr. Bratton, I want to direct your attention to 1985. Did you know a person by the name of Beverly Bassett?

Mr. BRATTON. Yes, I do.

Mr. CHERTOFF. She was the Arkansas Securities Commissioner starting in 1985?

Mr. BRATTON. Yes, she was.

Mr. CHERTOFF. Did she report to you?

Mr. BRATTON. I was the liaison in the Governor's office with the Securities Department, among other agencies.

Mr. CHERTOFF. Her responsibilities included regulating savings and loans?

Mr. BRATTON. She had the responsibility to enforce the Arkansas savings and loan statutes, yes.

Mr. CHERTOFF. And she reported to you from time to time on her activities; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. In 1985, did she make you aware of the fact that there had been a proposal on behalf of Madison Guaranty Savings & Loan to issue preferred stock?

Mr. BRATTON. At this point, I don't have a specific recollection that she did so. I think she probably did.

Mr. CHERTOFF. Were you familiar in 1985 with Madison Guaranty Savings & Loan?

Mr. BRATTON. Generally.

Mr. CHERTOFF. You knew it was a savings and loan operated by Jim McDougal?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. Did you know who Jim McDougal was?

Mr. BRATTON. Yes, I did.

Mr. CHERTOFF. Had you known Mr. McDougal personally?

Mr. BRATTON. Mr. McDougal had been on Governor Clinton's staff for a brief period of time in 1979. I was also on the staff at that time. I knew him then.

Mr. CHERTOFF. So you overlapped with him in terms of serving with Governor Clinton?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Now did you also learn during 1985 and 1986 that Madison Guaranty Savings & Loan had trouble in terms of its capital?

Mr. BRATTON. I was aware of that.

Mr. CHERTOFF. And needed to get more money?

Mr. BRATTON. I was aware of that.

Mr. CHERTOFF. Did you discuss that with the Governor?

Mr. BRATTON. I am sure I probably made him aware that the Securities Department through Ms. Bassett had passed that information on to me.

Mr. CHERTOFF. What was his reaction?

Mr. BRATTON. I don't recall specifically.

Mr. CHERTOFF. Do you remember how many times you talked to Mr. Clinton about Madison during the period 1985 to 1986?

Mr. BRATTON. Probably several times, but I don't have any idea how many.

Mr. CHERTOFF. Now in the summer of 1986, you got word from Beverly Bassett that the Federal regulators were taking a serious look at throwing Mr. McDougal out of the savings and loan; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. In fact, she sent you a handwritten memo to that effect?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Have you seen that memo recently?

Mr. BRATTON. That memo was shown to me during a deposition on the 5th of January.

Mr. CHERTOFF. I'm going to ask that we put it up briefly on the Elmo and we're putting a copy before you. This is dated July 2, 1986. We've seen this before in the hearings. Do you recognize this to be a note that Beverly Bassett sent you on July 2 relating to Madison Guaranty?

Mr. BRATTON. At this point, I do not specifically recall having received it, but I'm sure I probably did.

Mr. CHERTOFF. Did you talk to Ms. Bassett about this?

Mr. BRATTON. I believe that she and I had a phone conversation either prior to her sending me the memo or probably after she sent the memo.

Mr. CHERTOFF. Did you talk to the Governor about this?

Mr. BRATTON. I probably either had a conversation with him or sent him a short memo that would have summarized the information that had been passed on to me by Beverly Bassett Schaffer.

Mr. CHERTOFF. Did you understand that the Governor had a relationship with Mr. McDougal?

Mr. BRATTON. I knew that he knew Mr. McDougal.

Mr. CHERTOFF. When you received this memo, what was your impression or your understanding of the significance of the phrase, "Because of Bill's relationship with McDougal, we probably ought to talk about it"?

Mr. BRATTON. I don't know that I had any particular reaction to that.

Mr. CHERTOFF. Was it customary in your position as one of the counsels to the Governor to get notice from regulators about possible regulatory action that might affect somebody because of their relationship with the Governor?

Mr. BRATTON. It was common practice for agency directors that I had liaison responsibilities with to notify me if they were taking action that they thought would be of interest or of concern to the Governor, without regard to whether it was limited to someone he might know.

Mr. CHERTOFF. Well, this is not, of course, a reference to something that has a public policy impact. The memo specifically put in terms of Bill's relationship with McDougal, which you understood to be a personal relationship; right?

Mr. BRATTON. I understood that Governor Clinton knew Mr. McDougal.

Mr. CHERTOFF. Did you also know that the Rose Law Firm was doing work for Madison?

Mr. BRATTON. I believe I had a general impression that Rose had done some work for the savings and loan.

Mr. CHERTOFF. You knew that Mrs. Clinton was a partner at the Rose Law Firm?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Now did you learn in the summer of 1986 that the Federal Home Loan Bank Board had insisted that McDougal be relieved of his position at the savings and loan?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Did you report that to the Governor?

Mr. BRATTON. I'm sure I did.

Mr. CHERTOFF. Do you remember his reaction?

Mr. BRATTON. No, I don't.

Mr. CHERTOFF. I would like to direct your attention to early 1987. I want you to bear in mind that as of that point in time, you had learned about, as you have described to us, some of the issues with Madison involving the capitalization, that you learned that Madison and McDougal had been in trouble with regulators and you had learned that McDougal had been essentially kicked out of the savings and loan. Do you remember early in 1987, that there was the veto of a water and sewer regulatory bill known as Bill Number 1780?

Mr. BRATTON. Yes, I'm aware of that.

Mr. CHERTOFF. And that was a bill that would have essentially created an exception that would allow a particular utility in the Little Rock area, specifically in the one called Castle Sewer and Water, to hook up to certain customers without having to be regulated by the Public Service Commission; is that right?

Mr. BRATTON. It would have deregulated from PSC jurisdiction a very narrowly defined class of water companies. Whether there was more than one, I don't know.

Mr. CHERTOFF. Did you recommend the veto on the original bill?

Mr. BRATTON. Yes, I did.

Mr. CHERTOFF. And you did it because you thought it was too narrowly tailored to a particular company?

Mr. BRATTON. No, sir, I recommended that it be vetoed because it was unconstitutional, in violation of a provision in the State Constitution that prohibited what is referred to as special and local legislation.

Mr. CHERTOFF. Meaning that it's tailored to too specific a locality as opposed to generally applicable?

Mr. BRATTON. Generally.

Mr. CHERTOFF. At the time you recommended the veto, were you aware the legislation had been designed specifically to assist Castle Sewer and Water Corporation?

Mr. BRATTON. I don't believe I was aware what entity was described in the bill.

Mr. CHERTOFF. I would like to put up a memo dated February 24, 1987, to a Mike Wilson from Jim Guy Tucker, and it is entitled "Proposed Legislation for Castle Sewer and Water Corporation." The first paragraph says, "Attached is a proposed bill designed to take care of a problem of both Madison Guaranty Savings & Loan and Castle Sewer and Water Corporation." Have you seen this memorandum before?

Mr. BRATTON. Not that I know of.

Mr. CHERTOFF. Who was Mike Wilson?

Mr. BRATTON. Mike Wilson is a State Representative, and I believe he was ultimately the sponsor of the legislation that we are discussing.

Mr. CHERTOFF. It is this legislation, this initial effort, that you recommended the Governor veto and that the Governor did veto; is that correct? You can take a look at the bill.

[Witness reviewed the document.]

Mr. BRATTON. Without comparing them word for word, I cannot say it is exactly what was the legislation we vetoed. It seems to be very similar.

Mr. CHERTOFF. And again, at the time that you recommended the veto, you didn't know that this had any particular connection with Castle Sewer and Water; right?

Mr. BRATTON. I do not have any recollection of knowing that—what entity it might have been connected to.

Mr. CHERTOFF. Now, you learned sometime after the veto that Mr. R. D. Randolph was upset about the veto; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. Who is R. D. Randolph?

Mr. BRATTON. He apparently owned Castle Sewer and Water at that time.

Mr. CHERTOFF. Do you know whether Mr. Tucker also had an interest in Castle Sewer and Water?

Mr. BRATTON. I did not know at that time whether Mr. Tucker had an interest in it or not.

Mr. CHERTOFF. Had you heard at the time that a man by the name of David Hale had an interest in Castle Sewer and Water?

Mr. BRATTON. Not that I recall.

Mr. CHERTOFF. But you did know Mr. Randolph had an interest in it?

Mr. BRATTON. Yes.

Mr. CHERTOFF. How did you learn that Mr. Randolph was upset about the veto?

Mr. BRATTON. I believe I had a conversation with Mr. Randolph in which he expressed his concern about the veto of the legislation.

Mr. CHERTOFF. What did he tell you?

Mr. BRATTON. I don't recall specifically, and I'm not sure that I had a conversation with Randolph. I have a general impression that I did. I may have learned about his being upset about it from

some other way, but I think that Mr. Randolph probably called the Governor's office to inquire about the veto of the legislation and that I probably talked to him.

Mr. CHERTOFF. And you understood that the nature of Mr. Randolph's concern wasn't a disinterested issue about policy; it had to do with his particular interest in Castle Sewer and Water?

Mr. BRATTON. Yes.

Mr. CHERTOFF. I want to put up a memo that is dated April 14th, to BC from NH with a cc to SB 4/15. Have you seen this before, Mr. Bratton?

Mr. BRATTON. I assume that I probably saw it in the time frame contemporaneous to what we're talking about. I don't specifically recall it. I was shown this memorandum during my deposition on January 5th.

Mr. CHERTOFF. Ms. Hernreich, the initials "NH," do you recognize those to be your initials?

Ms. HERNREICH. Yes, I do.

Mr. CHERTOFF. And do you specifically remember preparing this memo?

Ms. HERNREICH. No, I do not remember preparing this memo.

Mr. CHERTOFF. Having looked at the memo and having seen your initials, do you believe it was you who typed the memo?

Ms. HERNREICH. Yes.

Mr. CHERTOFF. Do you remember the conversation with Mr. Randolph?

Ms. HERNREICH. Vaguely. Since I've seen this memo, then I have a vague recollection of a conversation, but that is extremely fuzzy after all these years.

Mr. CHERTOFF. Do you remember him being angry?

Ms. HERNREICH. No, I don't.

Mr. CHERTOFF. Am I correct that it was your practice when you typed a memo like this to make an accurate record of what was said to you?

Ms. HERNREICH. I tried to, yes.

Mr. CHERTOFF. That was your job?

Ms. HERNREICH. Yes.

Mr. CHERTOFF. Now, Mr. Bratton, I want to direct your attention first of all to the date of the memo. Do you remember whether you talked to Mr. Randolph before or after this memo was written?

Mr. BRATTON. If I talked to Mr. Randolph, it was probably before this memorandum. As I say, I'm not sure that I did talk to him. I think it is quite likely that he called the office and talked to me about the veto, was not satisfied with our conversation and then came by in an effort to see the Governor directly. That is my general recollection of what I think is likely to have happened, although I do not have a specific recollection that that did happen.

Mr. CHERTOFF. I want to direct your attention to the text of the memo. I take it that you will acknowledge that you are—it's essentially virtually certain you saw this memo; right?

Mr. BRATTON. Yes.

Mr. CHERTOFF. The memo reads, "Mr. Randolph dropped by to see you this morning to talk to you about the Water Bill you vetoed. He said that he talked to you on Sunday morning." I guess, the "you" there would be Mr. Clinton?

Ms. HERNREICH. I'm sorry?

Mr. CHERTOFF. This is addressed to Bill Clinton?

Ms. HERNREICH. Yes.

Mr. CHERTOFF. You write, "Mr. Randolph dropped by to see you this morning to talk to you about the Water Bill you vetoed. He said that he talked to you" and the "you" there would be Governor Clinton?

Ms. HERNREICH. Yes.

Mr. CHERTOFF. "On Sunday morning. He wants to know if the veto is going to stand. He would like you to call Jim Guy Tucker about this. He said that he has a difficult time getting an answer from you. He mentioned a meeting between you, Tucker, and Jim McDougal a couple of years ago which involved \$33,000. This was pretty cryptic." Do you remember that portion of the discussion?

Ms. HERNREICH. No, I do not remember that portion of the discussion.

Mr. CHERTOFF. Mr. Bratton, when you got the memo and you saw that, what was your reaction to the fact that Mr. Randolph had in the middle of this discussion about the veto brought up a meeting between himself, Tucker, and McDougal that involved the Governor and \$33,000?

Mr. BRATTON. I don't have any specific recollection of having received the memo, so I don't have any recollection of what reaction, if any, I would have had to any part of it.

Mr. CHERTOFF. Does it look to you, looking at this memo, as if Mr. Randolph was pretty crudely communicating the idea that there was some issue in which he had provided \$33,000 that he wanted to remind the Governor about in connection with this veto?

Mr. BRATTON. I have no idea what Mr. Randolph was trying to communicate.

Mr. CHERTOFF. Was part of your job, Mr. Bratton, to protect the Governor against people who might come in and essentially say things to the effect of "I've given you money, now you owe me this"? Was that part of your job?

Mr. BRATTON. I would assume that was probably part of the responsibility of everybody on the Governor's staff.

Mr. CHERTOFF. And you don't have a recollection of reacting to this statement about the \$33,000?

Mr. BRATTON. No, I do not.

Mr. CHERTOFF. Did you know that in April 1985, there had been a fundraiser where approximately \$33,000 had been raised to retire Governor Clinton's debt from a 1984 campaign?

Mr. BRATTON. I know that now. I don't recall whether I was aware of it at the time the fundraiser occurred or not.

Mr. CHERTOFF. Would it refresh your memory if I told you that in the course of that fundraiser, thousands of dollars were raised for Mr. Clinton to retire this personal debt, including checks from Mr. Randolph and Mr. Tucker?

Mr. BRATTON. No, it would not.

Mr. CHERTOFF. Would it refresh your memory if I told you that Mr. McDougal held the fundraiser at Madison Guaranty Savings & Loan?

Mr. BRATTON. As I indicated, I am aware now that that occurred. I don't believe that I made any connection between that fundraiser and any reference in this memo.

Mr. CHERTOFF. The Governor wound up speaking to Mr. Randolph, didn't he, Mr. Bratton? After you spoke to Mr. Randolph, didn't the Governor wind up speaking to Mr. Randolph?

Mr. BRATTON. I don't know whether he did or not.

Mr. CHERTOFF. Isn't it your impression that he wasn't, Mr. Randolph wasn't satisfied with his discussion with you and he went on to talk to the Governor?

Mr. BRATTON. It is my general recollection that that is probably what he wanted to do. I don't know whether he actually had a conversation with the Governor or not.

Mr. CHERTOFF. Did the Governor tell you to find out more facts about this transaction?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Now, I want to show you a document marked DKSX 18009 which we're going to put right in front of you. It's undated, looks like it's on a Post-it, and it says, "Ask Sam again. Be sure Walker has been called." Do you recognize the handwriting?

Mr. BRATTON. I'm not sure.

Mr. CHERTOFF. Do you know, was there a Representative Walker who was involved in this legislation?

Mr. BRATTON. He had—there was a member of the Arkansas General Assembly named Bill Walker who had some interest in this legislation.

Mr. CHERTOFF. After you talked to Mr. Randolph, did you come to learn that Madison Guaranty was involved, had a specific interest in this whole issue about the veto and the water bill?

Mr. BRATTON. Yes.

Mr. CHERTOFF. And that was the first time you learned it; right?

Mr. BRATTON. That is my recollection.

Mr. CHERTOFF. You understood from your previous dealings with Beverly Bassett that Madison was an institution which had had a troubled history; right?

Mr. BRATTON. Yes.

Mr. CHERTOFF. You understood that McDougal had been kicked out of the institution?

Mr. BRATTON. I was aware of that.

Mr. CHERTOFF. You knew that the Rose Law Firm had done work for Madison?

Mr. BRATTON. It was my impression that they had done some work for Madison.

Mr. CHERTOFF. Now, you understood in connection with the veto that this was a transaction of great interest to Mr. Randolph, to Mr. Tucker, and to Madison Guaranty Savings & Loan; correct?

Mr. BRATTON. I was aware that it was of great interest to Mr. Randolph and to Madison. I believe it was my impression at the time that Mr. Tucker was serving as counsel for one or more of the parties who were interested in the transaction.

Mr. CHERTOFF. I want to show you a letter dated April 24, 1987, from Mr. Tucker directed to Governor Clinton. Was it your typical practice, when you were counsel working on a matter, to get copies from the Governor of correspondence relating to the matter?

Mr. BRATTON. That would normally be the situation.

Mr. CHERTOFF. After your conversation with Mr. Randolph, you were essentially assigned by the Governor to, as you testified earlier, develop more facts relating to the transaction; right?

Mr. BRATTON. That's correct, but again, I am not positive that I did have a conversation with Mr. Randolph. I may have learned that he was upset about it in some other manner. I think I probably talked to him, but I'm not positive I did.

The CHAIRMAN. Can I ask you something? Prior to this line of questioning, Mr. Chertoff asked you about this memo to Bill Clinton from NH, NH is Ms. Hernreich; is that right?

Ms. HERNREICH. Yes.

The CHAIRMAN. "Re: R. D. Randolph's Visit" on the bottom left, what does that say? Did you prepare that, Ms. Hernreich?

Ms. HERNREICH. Yes, I did.

The CHAIRMAN. Was that your handwriting or Governor Clinton's there, cc?

Ms. HERNREICH. That's my handwriting.

The CHAIRMAN. So that meant that you sent Mr. Bratton a copy of this; right?

Ms. HERNREICH. I assume so. That's what it indicates, yes.

The CHAIRMAN. You sent him a carbon copy?

Ms. HERNREICH. Yes.

The CHAIRMAN. He's Governor's counsel?

Ms. HERNREICH. Yes.

The CHAIRMAN. You would typically in some kind of a manner of this type, some dispute, some irate constituent, whatnot, who had the ability to walk into the Governor's office, you would send to his counsel this kind of thing, wouldn't you?

Ms. HERNREICH. Well, in this case, it appears that I sent it to him after I had prepared the memo and sent it through to the Governor.

The CHAIRMAN. In other words, you sent it to the Governor, the Governor then sends it back to you; right?

Ms. HERNREICH. That's correct.

The CHAIRMAN. What does he write there? Is that his handwriting?

Ms. HERNREICH. Yes, it is. It says, "ugh."

The CHAIRMAN. That's a little arrow; right?

Ms. HERNREICH. Yes.

The CHAIRMAN. That refers to "needs to call Tucker," and that's why he goes "ugh," huh?

Ms. HERNREICH. I assume so. I don't really know if that's specifically what he was saying "ugh" about.

The CHAIRMAN. Well, it's "ugh." OK. And then what does he say after that?

Ms. HERNREICH. He doesn't say anything after that.

The CHAIRMAN. What's that handwriting underneath? What does that say?

Ms. HERNREICH. It says, "See if Sam will call him."

The CHAIRMAN. Who is Sam?

Ms. HERNREICH. Sam Bratton.

The CHAIRMAN. What did you do, Mr. Bratton?

Mr. BRATTON. I believe I called Mr. Tucker.

The CHAIRMAN. You remember this? This is not an uneventful, usual kind of thing that you get. Do you usually get this on a weekly basis?

Mr. BRATTON. During a legislative session, we would have people upset about something on an hourly basis, and I had the responsibility of calling an awful lot of them, Mr. Chairman.

The CHAIRMAN. Oh, really. This kind of thing? This kind of memo? Referring to \$33,000?

Mr. BRATTON. I don't know what the reference to \$33,000 was at that time.

The CHAIRMAN. Were you blind, deaf and dumb? Take a look at that. Now take a look at it.

Mr. BRATTON. Yes, sir, I have looked at it.

The CHAIRMAN. Read what it says. Look, when you tell me that you don't remember, I mean, are you really saying that you don't remember?

Mr. BRATTON. Do I specifically remember, independent of having seen this memorandum, what happened on a daily basis about this legislation 8 years ago? No, sir.

The CHAIRMAN. I'm not asking you about a daily basis. I'm asking you about something which would appear to have—this has ramifications. "See if Sam will call him." Did you call him?

Mr. BRATTON. Did I call who, Mr. Chairman?

The CHAIRMAN. Who is it talking about?

Mr. BRATTON. I believe it is talking about Mr. Tucker, and I apparently did call Mr. Tucker because I subsequently prepared a memorandum to the Governor that contained information that I got from a telephone call with Mr. Tucker, perhaps two telephone calls with Mr. Tucker.

The CHAIRMAN. So you did follow up and you did call him?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Mr. Bratton, I would like to go to this letter of April 24th to Governor Clinton from Mr. Tucker. The fourth paragraph there at the bottom begins, "R. D. Randolph, Madison Guaranty Savings & Loan, and I were all very disappointed that this non-controversial bill was vetoed." You have a copy of this letter?

Mr. BRATTON. I probably did.

Mr. CHERTOFF. Did it strike you as interesting that the writer of the letter should make a point of saying that both Mr. Randolph and Madison Guaranty Savings & Loan were very disappointed by the veto?

Mr. BRATTON. I don't recall.

Mr. CHERTOFF. Did you go in to the Governor at this point and say, "Governor, there might be a problem here, because your wife's firm has done work for Madison Guaranty, McDougal had a relationship with you in the past, he was tossed out of the bank, there are all kinds of problems with the savings and loan."? Did you give him any kind of a warning or suggest to him he might want to walk softly on this issue?

Mr. BRATTON. I don't recall what conversations that I may have had specifically with the Governor.

Mr. CHERTOFF. You have no recollection?

Mr. BRATTON. No, sir.

Mr. CHERTOFF. And you didn't see anything about this Madison Guaranty and Randolph's mention of \$33,000 that raised a warning flag for you?

Mr. BRATTON. I had no idea what the reference to \$33,000 was at the time, to the best of my recollection, no.

Mr. CHERTOFF. Did you ask?

Mr. BRATTON. I don't believe I did.

Mr. CHERTOFF. Did you ask Mr. Tucker?

Mr. BRATTON. I don't think so.

Mr. CHERTOFF. Did you ask Mr. Randolph?

Mr. BRATTON. I don't believe I did.

Mr. CHERTOFF. Did you ask Governor Clinton?

Mr. BRATTON. I don't think so.

Mr. CHERTOFF. Did Governor Clinton say to you, "Sam, there's a reference to \$33,000, I have no idea what this is about."?

Mr. BRATTON. I don't have any recollection of that.

Mr. CHERTOFF. Did you assume the Governor knew what the reference was about?

Mr. BRATTON. I assume that he probably did.

Mr. CHERTOFF. And you didn't want to push it anymore?

Mr. BRATTON. I don't recall that I asked him and I don't believe he told me.

Mr. CHERTOFF. When you saw Madison Guaranty Savings & Loan on this letter, that didn't ring a bell or raise a warning flag, either; right?

Mr. BRATTON. I don't recall specifically having seen this letter, although I'm sure I probably did.

Mr. CHERTOFF. Three days later, on April 27, 1987, there's a letter written to the new lawyers who were representing the Federal regulators who were now supervising or taking a more intensive role in supervising the savings and loan. It is a letter from Jim Guy Tucker that reads, "Dear Jeff, Governor Clinton vetoed H.B. 1780. He has told R. D. Randolph and the sponsors that the veto was an error he will correct if there is a special legislative session." Was the veto an error, Mr. Bratton?

Mr. BRATTON. I'm not sure what is meant by the reference to the veto being an error. I have no reason to think that the veto was an error.

Mr. CHERTOFF. Did the Governor tell you before April 27th that he considered the veto an error?

Mr. BRATTON. Not that I recall.

Mr. CHERTOFF. Were you part of the discussion that the Governor had with Mr. Randolph and the sponsors in which he indicated the veto was an error?

Mr. BRATTON. I don't recall being present with any conversation that the Governor had with Mr. Randolph.

Mr. CHERTOFF. Did you get a copy of this letter?

Mr. BRATTON. Not that I recall.

Mr. CHERTOFF. Did the Governor tell you he had spoken to Mr. Randolph and said the veto was an error?

Mr. BRATTON. I don't believe he ever told me that he had told Mr. Randolph that the veto was an error.

Mr. CHERTOFF. Now, you indicated that you were asked to do some research and get more of the facts together on this; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. You prepared a memo for Governor Clinton in May on this; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. I would like to put up your memo dated May 19, 1987, "To: Governor, From: Sam, Subject: Sewer District Regulation Legislation." At the time that you pulled together your research on this legislation, were you aware that the Rose Law Firm had been specifically asked in 1986 to do legal research on this very issue, whether there could be an extension of the utility to certain individuals who were not within the particular development that the utility serviced?

Mr. BRATTON. I don't believe so.

Mr. CHERTOFF. Did you know that Mrs. Clinton herself had reviewed a memo of legal advice, indicating to Madison that they had a certain ability to extend their utility operations?

Mr. BRATTON. I don't believe I was aware of that.

Mr. CHERTOFF. Did the Governor ever mention that to you?

Mr. BRATTON. I don't think so.

Mr. CHERTOFF. Let's get into your memo here. This is something you wrote yourself; right?

Mr. BRATTON. Yes.

Mr. CHERTOFF. It was based on your conversations with Tucker; is that right?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Tucker told you that the company had been sold to a company organized by R. D. Randolph to acquire the water and sewer utility?

Mr. BRATTON. That's what the memo says.

Mr. CHERTOFF. Did you know at the time that this transaction was part of a larger series of transactions involving IDC that have been subsequently characterized by regulators as—actually had already been characterized by regulators as fictitious transactions?

Mr. BRATTON. I don't believe I was aware of any of that.

Mr. CHERTOFF. It goes on to say at the end of the first paragraph, "Madison Guaranty is the mortgage holder. Therefore, in Tucker's opinion, the mortgage is invalid as the utility had not filed for regulation and obtained approval of the mortgage." Is that what Tucker told you?

Mr. BRATTON. I assume it is.

Mr. CHERTOFF. Did you know that a lawyer at the Rose Law Firm by the name of R. Davis Thomas had in October 1985, at the time of the original transaction, done research on what approvals, permits, et cetera, are necessary to operate sewer and water facilities?

Mr. BRATTON. I don't believe I was aware of that.

Mr. CHERTOFF. Did you know that another lawyer at the firm by the name of Rick Donovan had written a memo on February 17, 1986, to Hillary Clinton, indicating that there could be potential problems if the water and sewer utility in this location didn't submit to regulation by the Public Services Commission?

Mr. BRATTON. I don't think I was aware of that.

Mr. CHERTOFF. Mr. Tucker then went on in the third paragraph on the first page to indicate to you what the implications were of this problem he was having. He says:

If the legislation exempting certain water and sewer companies from PSC regulation is not enacted in the Special Session, litigation will probably be initiated between Madison Guaranty and the company owning the utility and that the initiation of litigation between those two parties would likely negate the possibility of the utility expanding its operation through any sort of arrangements with the City of Wrightsville. I assume the litigation would result because of the question of the validity of the mortgage.

So you understood from Mr. Tucker that if this legislation fix were not passed, the whole mortgage that underlay the transaction would suddenly be opened up to litigation; right?

Mr. BRATTON. That's what the memorandum says.

Mr. CHERTOFF. And was that an issue that was of concern to the State in an official capacity, whether there would be litigation between two private parties on a mortgage?

Mr. BRATTON. No.

Mr. CHERTOFF. Why did you put it in there?

Mr. BRATTON. Because it was part of the information about the background of the legislation, why it had been introduced in the first place, which was what I had been asked to provide the Governor was in essence a history of the legislation and what the parties' interests in it were and what the concerns were, which is what I did.

Mr. CHERTOFF. But this litigation between private parties over this mortgage would not be a public policy issue; right?

Mr. BRATTON. No, it would not.

Mr. CHERTOFF. But it might be of interest to the lawyers or the people who were involved in the original transaction; right?

Mr. BRATTON. I assume it would be of great interest to the parties to the transaction.

Mr. CHERTOFF. Let me finish this sentence. "And the fact that the S&L is now being operated under the close scrutiny of FSLIC and is no longer controlled by McDougal, et al." Why did you put that phrase in? Why was that significant?

Mr. BRATTON. I don't specifically recall.

Mr. CHERTOFF. Was it to communicate the fact that because Mr. McDougal was no longer in control of the institution, he could no longer be counted on in terms of whether he would take certain steps in the litigation?

Mr. BRATTON. I don't recall specifically what information I was provided that led me to include that sentence.

Mr. CHERTOFF. Well, I mean, looking at it logically, you're preparing a memo for the Governor in terms of deciding what position he wants to take on letting the legislation be resubmitted in an upcoming Special Session. And I take it it was the Governor who had to designate the items on the agenda for the Special Session; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. So if the Governor didn't say yes to putting this on the list for the Special Session, it wasn't going anywhere in the Special Session?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. And Tucker told you that he had a whole set of arrangements, business arrangements, in terms of refinancing his utility, that depended upon the passage of this legislation; right?

Mr. BRATTON. I don't know that he told me he had a whole set of refinancing—I don't recall being told anything beyond what's set out in the memo.

Mr. CHERTOFF. What he told you and what you made note of was that there would be litigation about the validity of the mortgage and that the S&L was no longer being operated and controlled by McDougal, but it was now under the close scrutiny of the regulators. You put that in the memo; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. That was your decision to put it in?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Why did you put it in?

Mr. BRATTON. It is possible that what I was suggesting there is that since the utility had originally been owned by the S&L and had been sold by the S&L, that while it was under McDougal's control, that McDougal might have been less likely to initiate litigation involving the mortgage than the regulators might have been.

Mr. CHERTOFF. But you couldn't count on McDougal anymore because McDougal was out of the savings and loan; right?

Mr. BRATTON. I am not sure what you mean by "Count on McDougal."

Mr. CHERTOFF. In other words, McDougal would no longer be at the savings and loan to control whether there was litigation; right?

Mr. BRATTON. McDougal was no longer at the S&L.

Mr. CHERTOFF. You knew when you wrote this that the Rose Firm had done work for the savings and loan; right?

Mr. BRATTON. I knew that the Rose Firm had done some work for the S&L. I had no idea whether the Rose Firm had done any work that had to do with any of these transactions.

Mr. CHERTOFF. You knew that there was, as Ms. Bassett said, a special relationship between McDougal and the Governor; right?

Mr. BRATTON. I knew that the Governor and Jim McDougal knew each other and had known each other for a good while.

Mr. CHERTOFF. Let me ask one last question. My time is up. We will come back to this. On the next page, you say in the memo, you talked to Robert Johnston, who was the head of the PSC, right, Public Service Commission?

Mr. BRATTON. Yes.

Mr. CHERTOFF. He would have to review the proposal?

Mr. BRATTON. He wouldn't have had to review the proposal, but it would have been my practice to talk with Johnston or someone at the PSC, if there was legislation that involved PSC jurisdiction.

Mr. CHERTOFF. You said in the memo, "I did tell Robert" that's Johnston, "that I thought you" and "you" is the Governor here; is that right?

Mr. BRATTON. Yes.

Mr. CHERTOFF. You said, "Would be inclined to try to be of some help in resolving this problem." Is that true? Did you tell Mr. Johnston that?

Mr. BRATTON. I assume I told Mr. Johnston that if I reported that in the memo. I don't recall the specifics of my conversation

with Mr. Johnston, but I assume that's what I told him if that's what I wrote at the time.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Senator SIMON. Senator Sarbanes, I'm going to have to leave. If I could just have 1 minute, first of all.

Senator SARBANES. Certainly.

OPENING COMMENT OF SENATOR PAUL SIMON

Senator SIMON. I think it is significant that Governor Clinton vetoed a bill that Madison Savings & Loan wanted. That, in itself, is significant. I would just like to ask Mr. Bratton this question: At any point, did Governor Clinton, in relation to this legislation, do anything that you would consider either illegal or unethical?

Mr. BRATTON. No, Senator.

Senator SIMON. I thank you.

Mr. BEN-VENISTE. Thank you, Senator.

Mr. Bratton, let me pick up on the theme of Senator Simon's question. To go back to the issue of the memorandum you received from Beverly Bassett Schaffer, you indicated that part of your job and part of the job of all people who worked for the Governor was to make sure that the Governor was insulated to the best of your ability from people who might make improper or inappropriate requests of him; is that correct?

Mr. BRATTON. Yes.

Mr. BEN-VENISTE. In that regard, Ms. Bassett Schaffer has testified that she thought it appropriate that the Governor know, first of all, what the impending action was going to be with respect to a State-chartered S&L. Was that appropriate, in your view?

Mr. BRATTON. Absolutely.

Mr. BEN-VENISTE. Second, since it was well known that Mr. McDougal and Mr. Clinton had a relationship that went back a number of years, that she was putting the Governor on notice through you that there might possibly be some ramification in terms of a request from Mr. McDougal to do something, that the Governor should be forewarned and prepared about that. Did you regard that as appropriate?

Mr. BRATTON. Yes.

Mr. BEN-VENISTE. Now let's go to the question—and with respect to anything that was done, in your view, with respect to the approval of the concept of issuing preferred stock by Madison Guaranty Savings & Loan, as well as the prerequisite for Madison Guaranty Savings & Loan increasing its net capital prior to being able to issue preferred stock, did you feel that there was anything irregular or inappropriate with Ms. Bassett Schaffer's decisions substantively on that issue?

Mr. BRATTON. I don't believe that she and I had a substantive discussion of the merits. I think she probably just mentioned to me in a conversation that she had received or the department had received an application from Madison to issue preferred stock. I don't think she called up and told me that. If we talked about it, I think she probably mentioned it in a conversation that we would periodi-

cally have about various matters that were pending before the department.

Mr. BEN-VENISTE. Fair enough. On the basis of what you have learned subsequently, indeed the basis of what you have learned as you sit here today, do you have any reason to believe that Beverly Bassett Schaffer acted inappropriately in any regard with respect to the Madison Guaranty Savings & Loan securities matter?

Mr. BRATTON. No, I do not.

Mr. BEN-VENISTE. Now let's move to the question of the bill for Castle Sewer. According to the information that we have, the initial bill, which was vetoed by Governor Clinton, was a bill which in hindsight seems to cover pretty much the Castle situation; is that correct?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. That bill passed, did it not, in the Arkansas State House unanimously; is that correct?

Mr. BRATTON. I don't recall whether it passed unanimously. It's my recollection that it passed with few, if any, dissenting votes in both bodies.

Mr. BEN-VENISTE. Well, let's turn to the recap, perhaps in the letter that Mr. Tucker wrote regarding the prior history of the bill. Are you with me? The first paragraph says, "H.B. 1780 by Representatives Mike Wilson and William Walker was vetoed after having passed both Houses with no dissenting vote." Does that refresh your recollection?

Mr. BRATTON. I assume that's probably accurate.

Mr. BEN-VENISTE. So the bill was sponsored by Representative Wilson. Was William Walker a Representative in the House or was he on the Senate side?

Mr. BRATTON. House. He was a Member of the House of Representatives.

Mr. BEN-VENISTE. So the bill was sponsored by two House members and passed the House without dissent. It was also passed in the Senate without dissent prior to the time it reached Governor Clinton's desk; correct?

Mr. BRATTON. Apparently so.

Mr. BEN-VENISTE. Now if, in fact, there was some motive to make sure that Governor Clinton made good on any arrangement that he had made before was in any way trying to help Mr. Tucker in this regard or Mr. Randolph in this regard, wouldn't it have been logical for someone to call your office or call the Governor's office and say, "Governor, this bill is coming, we're favoring it, this is our bill."?

Mr. BRATTON. It would certainly seem that way.

Mr. BEN-VENISTE. Yet there was no contact whatsoever, is that correct, as far as you know?

Mr. BRATTON. As far as I know.

Mr. BEN-VENISTE. Now was there a pocket veto in Arkansas back 10 or 11 years ago, whenever this happened?

Mr. BRATTON. No, there was not.

Mr. BEN-VENISTE. So that if the Governor hadn't vetoed the bill, it had passed unanimously in both Houses, if he had just let it alone, it would have become law?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. Yet because it had a constitutional infirmity, you brought it to the Governor's attention and the bill was vetoed?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. New legislation was proposed and can you tell us what the role of the Public Service Commission was in this, and who the Public Service Commission is?

Mr. BRATTON. The Public Service Commission is the State agency that regulates utility rates, quality of service, and other related issues.

Mr. BEN-VENISTE. Did they have a position with respect to this legislation? When I say "this legislation," I mean, in general.

Mr. BRATTON. At that point, the Commission had some concern about the overall regulation of small water companies. It was difficult to identify how many were out there. Oftentimes the cost of regulation which the company could then pass on to its customers arguably would exceed any benefit the customers might get from regulation, so there were some concerns about how much benefit, if any, customers of small water companies got from being regulated by the PSC.

Mr. BEN-VENISTE. Well, I don't know a thing about water and sewer regulation, I am the first to admit that. It seems like it may be a very specialized area of interest. I know nothing about Arkansas law, and these events occurred 10 or 11 years ago. But let me ask you, based on the position that the Public Service Commission took in general about small water and sewer companies, did they recommend any legislation?

Mr. BRATTON. I believe that there had been some discussion within the Public Service Commission staff to suggest, if not deregulating small water and sewer companies, to create some alternative government structure that would not have involved Public Service Commission jurisdiction.

Mr. BEN-VENISTE. Let's get the time frames back in focus. The first bill was vetoed approximately when?

Mr. BRATTON. Well, I assume sometime shortly before the Nancy Hernreich memo.

Mr. BEN-VENISTE. We have April 8, 1987, as the date. Does that sound appropriate to you?

Mr. BRATTON. Certainly in the general time frame.

Mr. BEN-VENISTE. Then a series of communications took place with respect to Mr. Tucker contacting the Governor's office and you and so forth and so on, as we've seen. But let me ask you to take a look at a memo which I believe is in front of you to Jerrell Clark from Doug Strock regarding H.B. 1780—PSC Position. Do you see that?

Mr. BRATTON. I have a copy of a memo from Doug Strock to Butch Sullins, Larry Jegley, and Tony Creston copied to Jerrell Clark.

Mr. BEN-VENISTE. Do you have one dated April 6, 1987?

Mr. BRATTON. Yes, I have a copy of that.

Mr. BEN-VENISTE. Let me ask you, sir, whether the Arkansas Public Service Commission, the PSC, had a position with respect to the bill that was vetoed by Governor Clinton. And I direct your attention to the second paragraph. Could we adjust the Elmo so

people could read the memo? Thank you. Could we focus in on that second paragraph? Can you tell whether the PSC had a position?

Mr. BRATTON. In paragraph 4—

Mr. BEN-VENISTE. No, paragraph 2—I'm sorry. It should be paragraph 3 of this 1-page memo where it says, "It may possibly be vulnerable to a constitutional challenge as special legislation."

Mr. BRATTON. Yes.

Mr. BEN-VENISTE. Now with respect to the concept of legislation covering small water and sewer utilities, does the memo illuminate a position by the PSC with respect to that concept?

Mr. BRATTON. The first sentence of the fourth paragraph certainly sets forth Mr. Strock's opinion, in which he says, "I believe the concept of the bill is fine, however, and should probably be extended to cover all water and sewer utilities that are Class B or lower under the Uniform System of Accounts adopted by the PSC."

Mr. BEN-VENISTE. So now the Public Service Commission, which is in charge of regulating water and sewer districts, I presume, is weighing in with a position on this legislation and saying that while the specific legislation which has passed both Houses is subject to constitutional challenge, the PSC favors some legislation of a broader nature covering small sewer and water companies.

Mr. BRATTON. Mr. Strock at that time was General Counsel for the staff of the Commission, so at least that was apparently the position of the staff, which would not necessarily be the same as the Commissioner's opinion, but it is my impression from conversations with Chairman Johnston at that time that his opinion and staff's opinion were generally consistent.

Mr. BEN-VENISTE. I was just getting to that. So this memo is written before Mr. Tucker or anybody else contacts the Governor's office, obviously, because the memo is written before the Governor even vetoed the legislation; correct?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. And so subsequently, do you have any reason to believe that the Public Service Commission or its counsel had changed its view about the general desirability of this legislation covering small water and sewer companies?

Mr. BRATTON. No, I do not.

Mr. BEN-VENISTE. So it would be fair to say, then, that consistently the Public Service Commission favored the passage of legislation which was ultimately adopted?

Mr. BRATTON. Or something similar thereto, yes, sir.

Mr. BEN-VENISTE. In concept. Who drafted the subsequent bill, do you know?

Mr. BRATTON. I don't know.

Mr. BEN-VENISTE. Do you know who sponsored it?

Mr. BRATTON. I don't recall. I assume Representative Wilson probably sponsored it the second time.

Mr. BEN-VENISTE. So again, we have the situation where legislation was proposed and then passed by both Houses of the Arkansas legislature?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. And did Governor Clinton, to your knowledge, have anything to do with proposing the second piece of legislation, or shepherding it through the legislation process?

Mr. BRATTON. My recollection is that the extent of the administration's involvement was the inclusion of the item in a call for a Special Session.

Mr. BEN-VENISTE. Now do you recall why that Special Session was called?

Mr. BRATTON. During the 19—and this is a correction from my deposition. I had two events out of sync in my deposition. I believe I said in my deposition that we had called that session to deal with an income tax credit issue involving higher education.

On further checking after my deposition, the tax issue was involved in 1985. The Special Session that was convened in the spring of 1987 was convened primarily to deal with revenue issues. Governor Clinton had proposed a very extensive revenue program in the 1987 session. We were unable to pass any substantial part of those revenue proposals, and the Special Session in June, I believe it was June 1987, largely dealt with an issue to enact some revisions of a portion of that revenue program from the 1987 regular session.

Mr. BEN-VENISTE. How many bills were proposed as part of the additional session?

Mr. BRATTON. I think there were some 40-plus items considered.

Mr. BEN-VENISTE. Forty, of which this regulation of small water and sewer companies was one?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. Now is it correct that the second attempt at legislation, the second bill, was passed without dissent again by both Houses of the Arkansas legislature?

Mr. BRATTON. I don't recall the vote by which it passed, but my general impression was that there was little, if any, opposition.

Mr. BEN-VENISTE. We are informed and I will stand corrected if someone has some other material, that again the legislation passed without any negative votes, unanimously in both Houses.

Mr. BRATTON. It is not uncommon for noncontroversial bills to pass without any dissenting votes.

Mr. BEN-VENISTE. That goes to the next question. What was the conceivable controversy, what might someone say about whether the public was being in some way ill served by this? Were there two sides to a debate about whether this legislation was appropriate?

Mr. BRATTON. I don't recall there being any particular debate about the legislation.

Mr. BEN-VENISTE. Will you tell us in your view why the second bill was appropriate and why the State regulatory agency, the Public Service Commission, favored it, as well as both Houses of the legislature?

Mr. BRATTON. Well, the first piece of legislation was vetoed because it did run afoul of the special and local provision, the State Constitution. The second piece of legislation was of general applicability and exempted all Class C water companies from PSC jurisdiction and is set out to some extent in Mr. Strock's memorandum to which you made reference earlier. The Commission did have strong concerns that the cost of regulation for small water companies outweighed any benefits of regulation.

Mr. BEN-VENISTE. Were there any newspaper editorial saying that this was some kind of a giveaway or was inappropriate or that these small water and sewer companies might run amok under these circumstances?

Mr. BRATTON. I have no recollection of there being any debate of any kind about it.

Mr. BEN-VENISTE. So when you say that it was noncontroversial, that means nobody had a position that you heard of against this legislation?

Mr. BRATTON. I don't recall having been aware of any opposition to it.

Mr. BEN-VENISTE. Absolutely white bread, noncontroversial?

Mr. BRATTON. That's my recollection.

Mr. BEN-VENISTE. Now with respect to this \$33,000 in the memo, Ms. Hernreich, which is dated April 14, Mr. Chertoff pointed out that there had been a fundraiser and that fundraiser occurred in 1985; is that correct?

Ms. HERNREICH. Well, that's what I've heard. I came—from what I have read or heard subsequent to this event is that there was a fundraiser in 1985. I came to work for Governor Clinton in September 1985, and I believe that this fundraiser occurred prior to that.

Mr. BEN-VENISTE. And the water and sewer company, the utility on the property which was purchased by Tucker, the Castle Sewer and Water Company, was purchased in 1986?

Ms. HERNREICH. I don't know that.

Mr. BEN-VENISTE. Therefore, the notion that somebody made a contribution of \$33,000 in 1985 in order to get favorable treatment on a property they had not even bought seems rather farfetched, doesn't it?

Ms. HERNREICH. It does.

Mr. BEN-VENISTE. Is it correct that people who—and I suppose this is true in every State of the Union, but that people who are in business and who have made a contribution to a candidate may feel that they're entitled to access or the successful office seeker's ear in some respect. And the job of the staff is to protect against that, so that the Governor is not compromised or put in a compromising position and so forth.

Mr. Bratton, you have indicated that during the legislative session, you were receiving communications on an hourly basis with respect to people who were in some way unhappy or in some other respect wanted a communication to go to the Governor; correct?

Mr. BRATTON. Yes, sir.

Mr. BEN-VENISTE. What did you perceive your job to be as the Governor's counsel?

Mr. BRATTON. Well—

Mr. BEN-VENISTE. In that regard.

Mr. BRATTON. In that regard, it was my responsibility to, where appropriate, indicate to individuals who had concerns about positions that the Governor might have on their legislation, explain what those positions were. If that was inadequate, to convey those concerns expressed by constituents to the Governor to see what accommodations we could make with constituent groups, with members of the General Assembly.

Mr. BEN-VENISTE. Now let me ask you the bottom line question with respect to the utility legislation that we have been discussing. Did the Governor in any way, shape or form do anything improper in connection with his position regarding this legislation?

Mr. BRATTON. Absolutely not.

Mr. BEN-VENISTE. Do you have any doubt or any reservation about that?

Mr. BRATTON. None whatsoever.

Mr. BEN-VENISTE. We would cede back our time on this.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I want to just make sure we have the sequence clear, Mr. Bratton. Early in 1987, there was a bill passed unanimously to allow this exemption from regulation for Castle Sewer and Water, although they don't use the name Castle Sewer and Water; right?

Mr. BRATTON. Correct.

Mr. CHERTOFF. It's not a debated bill?

Mr. BRATTON. I am not aware that there was any particular debate, and certainly some of the documentation here suggests that it was passed without any negative votes.

Mr. CHERTOFF. So was it the practice sometimes in the legislature to tie up a whole bunch of bills that were not of great public concern and move them through on a very expedited basis?

Mr. BRATTON. No, sir.

Mr. CHERTOFF. But you don't remember any debate about this, initially?

Mr. BRATTON. No, sir.

Mr. CHERTOFF. You recommend the Governor veto it; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. And then the Governor hears from Mr. Randolph; is that right?

Mr. BRATTON. Yes.

Mr. CHERTOFF. Mr. Randolph is upset; right?

Mr. BRATTON. Apparently.

Mr. CHERTOFF. Because this impairs the business interests of Castle Sewer and Water; right?

Mr. BRATTON. Apparently he was upset about the veto of the legislation.

Mr. CHERTOFF. Do you know, by the way, whether the people who are now serviced by that utility, such as Castle Sewer and Water, whether it's, in fact, the case that their rates are about three time the rates of the people in Little Rock who have their utilities regulated by the PSC?

Mr. BRATTON. I have some impression from reading articles in the newspaper that the rates for customers served by Castle Sewer and Water are higher than the City of Little Rock rates, but that there are many reasons for that.

Mr. CHERTOFF. One of those reasons is that the Public Service Commission doesn't control the rates for Castle Sewer and Water; is that right?

Mr. BRATTON. Not necessarily.

Mr. CHERTOFF. Would you agree with me that the Public Service Commission doesn't control the rates of Castle Sewer and Water?

Mr. BRATTON. I would agree that the Public Service Commission does not have jurisdiction over their rates. I would not agree that the fact that those rates are regulated necessarily means they are higher than they otherwise would be.

Mr. CHERTOFF. Well, would you agree they are about three times higher than elsewhere in Little Rock?

Mr. BRATTON. I don't know what the precise rates are.

Mr. CHERTOFF. Did Governor Clinton ask you to solicit the views of the ratepayers when he told you in April and May to go out and get information about this change in the bill that Mr. Tucker and Mr. Randolph wanted?

Mr. BRATTON. Not that I have any recollection of.

Mr. CHERTOFF. Now when you reported back to the Governor, the Governor agreed to put this, and you were asked by Mr. Ben-Veniste, what did the Governor do for Messrs. Randolph and Tucker in terms of what they wanted. Who put the item on the agenda for the Special Session?

Mr. BRATTON. Items on call for a Special Session are placed on that call by the Governor as he is the only one who can convene a Special Session and set an agenda for it.

Mr. CHERTOFF. So the Governor gave the green light to put it on the Special Session agenda; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. The Governor signed it when it passed again; is that right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. Didn't the Governor's office draft the revised bill?

Mr. BRATTON. I don't have any recollection of having drafted the revised bill. If it was drafted in the Governor's office, I probably would have drafted it. I don't believe I did.

Mr. CHERTOFF. Let me refresh your memory. The letter of June 2, from the Secretary to Mr. Tucker, we're going to get it for you in a second, to Mr. Jeffrey Stern, who represents I guess the regulators and the bank here in 1987. "Dear Mr. Stern: At the request of Mr. Tucker, please find enclosed a copy of a proposed bill which we received from the Governor's office. Mr. Tucker needs advice as quickly as possible on the effect of this proposed bill." Does this refresh your memory that the Governor's office—let me make sure. It's June 2, 1987. It's on Mitchell, Williams, Selig & Tucker stationery. I'll give you my copy. You can read us the letter. It's only two paragraphs.

The CHAIRMAN. Why don't we suspend for just a moment and get some copies made both for the Majority and Minority, and this way we can give Mr. Bratton a copy. While we are having this letter copied, would either one of the witnesses like to take a short break for any reason?

Mr. BRATTON. No.

Ms. HERNREICH. I'm fine.

The CHAIRMAN. OK.

[Recess.]

The CHAIRMAN. Modern technology. The copier in the back broke down. That explains the delay. Do you have a copy down there, Mr. Bratton?

Mr. BRATTON. No, sir. They took my copy for copying.

The CHAIRMAN. We'll give you the one copy. We'll have you read it and make copies later on for anyone who is interested.

Mr. CHERTOFF. Why don't you read the letter, Mr. Bratton?

Mr. BRATTON. The letter is on letterhead, Mitchell, Williams, Selig & Tucker, dated June 2, 1987. "Mr. Jeffrey B. Stern, Ingersoll & Block, 1401 16th Street, NW, Washington, DC 20036. Re: Castle Sewer and Water Corporation. Dear Mr. Stern, at the request of Mr. Tucker, please find enclosed a copy of a proposed bill which we received from the Governor's office. Mr. Tucker needs advice as quickly as possible on the effect of this proposed bill."

Mr. CHERTOFF. Does that refresh your memory that the Governor's office drafted the proposed bill?

Mr. BRATTON. No, sir, that does not necessarily suggest to me that the Governor's office actually prepared the bill.

Mr. CHERTOFF. You have reason to believe that the letter from Mr. Tucker's office contained a falsehood?

Mr. BRATTON. No, sir.

Mr. CHERTOFF. Do you agree with me that the letter indicates that they got the proposed bill from the Governor's office?

Mr. BRATTON. Yes, sir. That does not necessarily indicate that the Governor's office drafted the bill. I did most of the drafting that was done in the office, and I tried to farm out as much of it as possible. It is possible it was drafted by the Public Service Commission staff, it is possible it was drafted by a legislation counsel staff. I don't recall having drafted it.

Mr. CHERTOFF. But it was reviewed and approved by the Governor's office; right?

Mr. BRATTON. Any legislation that was going to be included in a call for a Special Session would have been reviewed by the Governor's office prior to its inclusion in the call for the session.

Mr. CHERTOFF. So what we know now, Mr. Bratton, is that the original veto came before anybody was aware that the purpose of the legislation was to aid Castle Sewer and Water, that there were subsequent conversations with Tucker and Randolph, some of which involved you, some of which involved the Governor, in at least one of which the Governor said it was an error to veto the bill, that the Governor agreed to put it on the call for a Special Session, that if the Governor had not done so, it could not have been passed a second time?

Mr. BRATTON. No, I don't agree that all of those things are true.

Mr. CHERTOFF. Which things do you disagree with?

Mr. BRATTON. If you would like to run through them one by one—

The CHAIRMAN. Let's just calm down, all of us. We're going to go through one at a time, OK? And if you disagree, you will have an opportunity to explain it.

Mr. BRATTON. I'd be happy to, Senator.

Mr. CHERTOFF. The original bill was vetoed; right?

Mr. BRATTON. Correct.

Mr. CHERTOFF. And you did not know at the time that you recommended the veto that it was designed to assist Castle Sewer and Water?

Mr. BRATTON. I did not know that, that's correct.

Mr. CHERTOFF. Mr. Randolph communicated to you and Mr. Tucker communicated to you that it did involve Castle Sewer and Water and that they were upset about the veto?

Mr. BRATTON. Mr. Tucker communicated that to me. I think it is likely Mr. Randolph did.

Mr. CHERTOFF. You knew that Mr. Randolph had communicated that to the Governor?

Mr. BRATTON. I knew that Mr. Randolph had attempted to communicate that to the Governor.

Mr. CHERTOFF. And we know from seeing a letter written by Mr. Tucker that the Governor had told Mr. Randolph that the veto was in error?

Mr. BRATTON. No, sir, I know that assertion is made in that letter, I don't know that the Governor told anybody that the veto was in error. I know that that assertion is made in that letter.

Mr. CHERTOFF. In any case, you were not part of a conversation with R. D. Randolph and the sponsors in which the Governor said the veto was an error?

Mr. BRATTON. I don't recall having been present in any conversation between the Governor and Mr. Randolph.

Mr. CHERTOFF. We also know that Mr. Randolph communicated to the Governor that in his mind, there was a connection between this request he was making to resubmit the bill and a \$33,000 meeting 2 years ago; right, because you saw it in the memo?

Mr. BRATTON. I saw a memo that reflected that Mr. Randolph made some reference to that to Ms. Hernreich.

Mr. CHERTOFF. Now did you understand the thrust of that memo, that it was designed to draw a connection between the \$33,000 meeting and this legislative action or official action?

Mr. BRATTON. Absolutely not, because I had no idea what the \$33,000 referred to.

Mr. CHERTOFF. You thought that Mr. Randolph just mentioned it in the course of a—you are the counsel to the Governor, Mr. Bratton, and you get a memo that indicates that Mr. Randolph has come in and he said two things, "I am really angry about this veto which hits me in my pocketbook; and by the way, we had a meeting a couple of years ago where \$33,000 was involved." You don't see the juxtaposition of these two statements in a single conversation as a troubling suggestion?

Mr. BRATTON. I do not know what Mr. Randolph was trying to suggest.

Mr. CHERTOFF. Did the red flag go up and did you say, "I'm going to get on the phone to Randolph and I'm going to ask him, what the hell do you think you are doing raising the issue of a \$33,000 contribution at the same time you are asking the Governor to reverse his veto?"

Mr. BRATTON. No.

Mr. CHERTOFF. Did you go to the Governor and say, "Governor, what on earth is R. D. Randolph doing bringing up \$33,000 in the same conversation as he asks you to reverse the veto?"

Mr. BRATTON. I don't have any recollection of asking the Governor what the reference to \$33,000 was.

Mr. CHERTOFF. And you did not see any reason to pursue this suggestion?

Mr. BRATTON. Not that I recall.

Mr. CHERTOFF. You did not see any reason to wonder whether there was an issue because the Rose Law Firm had represented Madison?

Mr. BRATTON. I had no reason to think there was any tie between this legislation and the Rose Law Firm.

Mr. CHERTOFF. Let me ask you, you were asked your opinion about whether there's anything unethical or improper about this kind of thing. Were you aware that as part of the legal research done before the closing on the transaction to sell this utility to R. D. Randolph, that there was legal research done by the Rose Law Firm specifically addressing the question of whether or not this utility had to be regulated by the Public Service Commission?

Mr. BRATTON. I have no recollection of being aware of that.

Mr. CHERTOFF. Would you agree with me what you do know is that when you went out to get more information at the request of the Governor, the information you got was that if this legislative problem were not—if this veto were not reversed, if this legislation didn't get through, there would in all likelihood be litigation, a court dispute between Madison and Randolph, about the original sale; right?

Mr. BRATTON. Yes.

Mr. CHERTOFF. You put it in the memo?

Mr. BRATTON. That's what I put in the memo.

Mr. CHERTOFF. At the time you put that in the memo, you were not aware, I take it, that one of the opinions that underlay that original transaction had been written or had been rendered by the Rose Law Firm and specifically by Mrs. Clinton?

Mr. BRATTON. I was not aware of that.

Mr. CHERTOFF. Knowing that now, had you known at the time that Mrs. Clinton personally had been involved in the rendering of an opinion relating to the regulation of this utility that was one of the conditions of this sale in February, would you have said to the Governor, "You ought to stay out of this because your wife and her firm have a personal financial stake in any litigation that arises if there's a dispute about this."?

Mr. BRATTON. I don't know what I would have recommended if I had known that at the time.

Mr. CHERTOFF. So I guess you are not really in a position to discuss whether there's a conflict of interest here because you didn't know the facts in 1987?

Mr. BRATTON. That there was a conflict of interest about what?

Mr. CHERTOFF. About whether the Rose Law Firm and Mrs. Clinton had rendered legal advice that would become the very subject of the dispute that Mr. Tucker raised with you when he explained why it was so important to get this veto reversed. You just told us you weren't aware of this representation.

Mr. BRATTON. That's correct.

Mr. CHERTOFF. The Governor did not tell you that the Rose Law Firm and that Mrs. Clinton had been involved in rendering the very legal advice on the very issue that would be disputed if this veto were not changed?

Mr. BRATTON. I have no reason to believe he was aware of it.

Mr. CHERTOFF. But Mr. Tucker made you aware of this mortgage dispute; right?

Mr. BRATTON. Mr. Tucker did not make me aware of what role the Rose Law Firm might have played in any opinion involving these issues.

Mr. CHERTOFF. But he made you aware of the fact that if this veto were not reversed—and it was reversed, wasn't it?

Mr. BRATTON. No, sir—

Mr. CHERTOFF. The Governor changed his veto?

Mr. BRATTON. No, sir. The veto was not reversed. A piece of legislation that was of general applicability to all Class C water and sewer companies was subsequently passed. The veto was not reversed.

Mr. CHERTOFF. It was actually put on the Special Session by the Governor?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. When you did your memo of May 19, which we will put up right before you so you can look at it, this was your report to the Governor as to your findings of all the significant facts relating to this action; right?

Mr. BRATTON. It is my report to the Governor based on the conversation, or perhaps two conversations, I had with Mr. Tucker.

Mr. CHERTOFF. Which he had asked you to have in order to get the facts on this whole issue; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. Is there discussion in here about the impact on the ratepayers?

Mr. BRATTON. No, there is not a specific discussion in that memo.

Mr. CHERTOFF. You were shown a memo by the Public Service Commission about their view of the constitutional issues. Is that discussed in this memo?

Mr. BRATTON. It is not specifically discussed in this memo.

Mr. CHERTOFF. What is specifically discussed in this memo?

Mr. BRATTON. What is specifically discussed in this memo is the information I got from Mr. Tucker on the background of the legislation. The PSC memorandum that talked about the constitutional problem talked about the earlier legislation which had already been vetoed for that reason.

Mr. CHERTOFF. What you put in this memo was a discussion of the effect of this veto and this legislation on Mr. Randolph's pocket-book because he owned the utility; right?

Mr. BRATTON. What I put in this memo was the information I got from Mr. Tucker regarding the background on this issue.

Mr. CHERTOFF. What you put in this memo, Mr. Bratton, was that if this weren't cured, if this thing weren't passed in the Special Session, there would in all likelihood—you put "probably" be litigation between Madison and the utility in which the issue of the validity of the mortgage would be directly called into question; is that right?

Mr. BRATTON. That's what the memo says.

Mr. CHERTOFF. And of course, as you have indicated, you didn't know at the time that the Rose Law Firm had been involved in rendering advice on this very issue before the mortgage was executed; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. Would you agree with me that that's a fact that had you known about it, you might have considered advising the Governor that there was a conflict of interest there?

Mr. BRATTON. The fact that the Rose Law Firm had rendered an opinion—

Mr. CHERTOFF. That turned out not to be right.

Mr. BRATTON. —might or might not have been a conflict of interest as to whether a matter could be considered by the Arkansas General Assembly.

Mr. CHERTOFF. Let's reason it out for a second, Mr. Bratton. The threat here by Mr. Tucker was if this legislation does not get through the Special Session, there's going to be a court case about the validity of this mortgage. Would you agree with me in that court case it would be highly likely that the number one thing that would be attacked would be the original opinion saying you didn't need to get PSC approval that had been rendered by the firm as a condition to doing this mortgage?

Mr. BRATTON. I don't know what the issues in the litigation would have been, and I don't know what the opinion from the Rose Law Firm would have been.

The CHAIRMAN. Well, let me tell you something now. You're the Governor's counsel, you're a lawyer, you've dealt with these things, and I will yield to the Minority if they—OK. Let's put that memo up. This is the first time I have read this. Go down to the last paragraph on the first page:

According to Tucker, if the legislation exempting certain water and sewer companies from the PSC regulation is not enacted in the Special Session, litigation will probably be initiated between Madison and the company owning the utility and the initiation of litigation between those two parties would likely negate the possibility of the utility expanding its operation through any sort of arrangements with the City of Wrightsville. I assume the litigation would result because of the question of the validity of the mortgage and the fact that the S&L is now being operated under the close scrutiny of FSLIC and is no longer controlled by McDougal, et al.

Obviously, Mr. Tucker told you this, but you thought that it had such significance that you just didn't—you don't just report everything that somebody tells you, that you put in the fact that this litigation would take place and that McDougal no longer controlled it. Then you say:

I have talked with Robert Johnston and asked Johnston to review with appropriate PSC staff what options may be available to address the Tucker/Randolph problem.

You are asking how do we resolve this short of deregulation proposed, and you say, "I did tell Robert that I thought you would be inclined to try to be of some help in resolving this problem." So you said this. What impact would proposed legislation have on the merits of this legislation? People get sued everyday. You're attempting, it's obvious here, to attempt to avoid this litigation, and you bring in that McDougal no longer controls this.

Why would you put that in a memo? What impact would that litigation between Madison and a utility have on the appropriateness of the merits of this legislation, which heretofore you said was unconstitutional? And you had vetoed?

Mr. BRATTON. The legislation that was ultimately passed was not unconstitutional.

The CHAIRMAN. I understand that. We're now talking about why you would want to overcome this. Why? I mean, what is the merit in your saying, "By the way, they say there's going to be litigation," et cetera. You see, if you didn't want to make and if there wasn't a direction to solve this, given what we know, the memo that Ms. HERNREICH took down when this fellow walked in and starting screaming, given the Governor saying, "ugh," given the carbon copy sent to you. This didn't just drop out. You really wanted to keep that litigation from taking place. Isn't that true? TUCKER told you it was going to happen and you said you know there's going to be litigation. Is that true or not?

Mr. BRATTON. I didn't have any personal concern whether litigation happened or not. If—

The CHAIRMAN. If you didn't have any personal concern, you certainly wrote a memo, the gist of which was, if you read this, that you're going to have litigation and you want to avoid this, and this is a way to avoid it. You already passed legislation to avoid that litigation, isn't that true? That's the gist of the memo. You say this is a problem.

Mr. BRATTON. Senator, the gist of the memo is that Mr. TUCKER says this is a problem and this is why he says it is a problem. I don't say it is a problem. I report what Mr. TUCKER told me. And then—

The CHAIRMAN. How do you draft legislation? You recommend drafting legislation or dealing with this problem. You say, "I thought you would be inclined to try to be of some help." You say that to the Governor. Is that true? Look at that, second page, right? "I thought you would be inclined to try to be of some help in resolving this problem." Is that true? Did you put that there?

Mr. BRATTON. If that's what I wrote at the time, I'm sure that's what I told JOHNSTON, and if I told him that, that would have been my impression.

The CHAIRMAN. You thought it was important enough to even put in there that McDougal no longer—going back, this would be "under the close scrutiny of FSLIC and is no longer controlled by McDougal." You knew that Jim McDougal had a close relationship and, you know, you could count on him but you couldn't count on him anymore because you now had FSLIC there; isn't that true?

Mr. BRATTON. I'm not sure what you mean by "count on."

The CHAIRMAN. Why would you put that in there? This is an assumption that you make in the last paragraph, last sentence. You say, "I assume the litigation would result because of the question of the validity of the mortgage." You say this. You didn't say TUCKER told you. You assume this. This is you, this is not something that TUCKER told you, "and the fact that the S&L is now being operated under the close scrutiny of FSLIC and is no longer controlled by McDougal." Why did you think it was important to put that in? What was the relevance of that?

Mr. BRATTON. I would imagine that I included that statement to indicate that I thought the litigation was more likely to occur with the FSLIC managing the utility than if McDougal was controlling the utility—I'm sorry, the savings and loan, since the savings and loan had sold the utility while McDougal was in control of it and

he would have been less likely to initiate the legislation—I mean, the litigation than the FSLIC would have been.

The CHAIRMAN. So you felt that it was important to help avoid litigation?

Mr. BRATTON. I had no concern whatsoever whether there was litigation or not.

The CHAIRMAN. That's the intent of this memo, to convey that there's going to be litigation and I assume that you want to help. "I thought you would be inclined to try to be of some help in resolving this problem."

Mr. BRATTON. Yes, sir. I apparently told Mr. Johnston that I thought the Governor would be inclined, if there was a way to address this issue in a constitutional manner that did not create other problems, that he would be inclined to look at it.

The CHAIRMAN. To avoid the litigation.

Mr. BRATTON. No, sir.

The CHAIRMAN. You don't talk about anything else, you don't talk about the rates, you don't talk about the impact on the company, you don't talk about what the disparity may or may not be, you don't talk about the constitutional problem. What you mention here, the only thing you really mention here is that this dispute is going to break out and that Jim McDougal is not there any more to control the situation and that you have the FSLIC, the close scrutiny of FSLIC and is no longer controlled by McDougal. That's your memo.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. If we can put up the first page of that memo on the machine, the second paragraph. Mr. Bratton, who is Bill Walker?

Mr. BRATTON. Bill Walker was a State Representative at that time. He's now a member of the State Senate. He represented an area that included a portion of the City of Wrightsville.

Senator SARBANES. This memo says—because we've just heard it asserted it had nothing to do with rates—"Bill Walker's interest in this matter apparently arises from the fact that this utility company could sell water to the City of Wrightsville at wholesale at a price substantially less than Wrightsville is currently purchasing water from the City of Little Rock." When you say, "this utility company," do you mean Castle—I take it that's what this memo means; is that correct?

Mr. BRATTON. Yes, that's correct.

Senator SARBANES. What was it that Walker was asserting, as you understood it?

Mr. BRATTON. Walker's interest in the legislation was to try to get lower rates for the City of Wrightsville, which is an incorporated municipality with a very high-minority population, very low-socioeconomic base. The water rates that Wrightsville was paying at the time as a result of purchasing water from Little Rock and transmitting it to Wrightsville were fairly high. Walker was attempting to negotiate arrangements on behalf of the City of Wrightsville to find an alternative water supply source for the City of Wrightsville and apparently Castle Sewer and Water was one of

the alternatives that was potentially available as a source of water for the City of Wrightsville.

Senator SARBANES. One of these memos that was shown to you has Walker seeking an appointment with the Governor to bring in Tucker and Randolph; is that correct?

Mr. BRATTON. I believe it does.

Senator SARBANES. Have you seen that memo?

Mr. BRATTON. I believe I saw it during my deposition.

Senator SARBANES. Was Walker the author of this legislation?

Mr. BRATTON. He was one of two sponsors, along with Representative Wilson.

Senator SARBANES. And did he remain interested in the legislation after it was vetoed?

Mr. BRATTON. That's my recollection.

Senator SARBANES. When was the legislation vetoed? Do you recall that?

Mr. BRATTON. Apparently sometime in the early part of April and this memorandum is dated——

Senator SARBANES. The early part of April. And in May, Walker was seeking this meeting, and this memo that's up on the board here in which you make reference to Walker's interest in this matter is dated May 19th; is that correct?

Mr. BRATTON. That's correct.

Senator SARBANES. So Bill Walker continued to pursue this matter——

Mr. BRATTON. That's my recollection.

Senator SARBANES. —subsequent to the veto; is that correct?

Mr. BRATTON. That's my recollection, and that's what this memorandum dated May 13th would indicate.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me pursue the issue of the Wrightsville district and Mr. Walker's interest. Do I understand you correctly to say that at the time this legislation was being considered, the residents of Wrightsville were paying a substantial premium over that paid by, say, residents of Little Rock for their water?

Mr. BRATTON. That's my general recollection, and that seems to be reflected in the May 19th memo.

Mr. BEN-VENISTE. And that if this legislation passed and the district served by Castle were expanded to include Wrightsville as was anticipated, Walker hoped that this would result in lower rates for his constituents?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. Did you have any reason to disbelieve that?

Mr. BRATTON. No.

Mr. BEN-VENISTE. Do you know whether what they were paying in Wrightsville was a multiple two or three times that of Little Rock or you just know it was substantially more?

Mr. BRATTON. I don't have any recollection of what those rates are other than that they were considerably higher than Little Rock and Walker apparently thought it could be lessened by a contract with Castle Sewer and Water.

Mr. BEN-VENISTE. Now let's clear this up. The veto that Governor Clinton issued with respect to the first bill was not reversed by Governor Clinton, was it?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. The constitutional infirmity of the first bill was remedied in the drafting of the second bill at the suggestion and approval of the Public Service Commission; is that correct?

Mr. BRATTON. The Public Service Commission staff had suggested that legislation which would deregulate small water companies be considered and passed.

Mr. BEN-VENISTE. And that consideration by the Public Service Commission had gone back even years earlier, had it not?

Mr. BRATTON. At least some point earlier.

Mr. BEN-VENISTE. According to records we've seen back in 1985, they were taking the same position about the regulation of the small water and sewer companies?

Mr. BRATTON. I believe that's correct.

Mr. BEN-VENISTE. So they've consistently taken the position that such legislation would be beneficial. There was no opposition to it. The legislation that was proposed was proposed without consulting the Governor in any way about the interests of any party. The legislation was proposed by Representative Walker and was vetoed because it was likely unconstitutional in your view and in the view of the Public Service Commission?

Mr. BRATTON. Proposed by Wilson and Walker and vetoed because of the constitutional problem.

Mr. BEN-VENISTE. New legislation is proposed consistent with the position of the Public Service Commission, with strong support by Representative Walker for the constituents of the Wrightsville district, if I understand the chronology of events. And it was now in a form that was constitutional, in your view?

Mr. BRATTON. Correct.

Mr. BEN-VENISTE. It was not controversial. There was no one, to your knowledge, who opposed this deregulation?

Mr. BRATTON. I do not have any recollection of any controversy regarding it.

Mr. BEN-VENISTE. Finally, was there any conversation that you had with the Governor to suggest that the reason why the Governor ought to sign the bill if it passed both Houses again, which seemed quite likely, since it had passed in its unconstitutional form earlier—

Mr. BRATTON. Yes.

Mr. BEN-VENISTE. —was there any suggestion in conversation with the Governor that a reason why the Governor ought to sign it was to avoid litigation between Madison or its successor and Mr. Tucker?

Mr. BRATTON. Not that I have any recollection of.

Mr. BEN-VENISTE. When then-Governor Clinton wrote the words "ugh" on this memorandum that set forth Mr. Randolph's reminder about a \$33,000 conversation, that pretty well summed up his position about people making these kinds of observations; would that be fair to say, Ms. Hernreich?

Ms. HERNREICH. Yes.

Mr. BEN-VENISTE. Since we have not talked much to you this morning, Ms. Hernreich, let me ask you very briefly whether in your present position you have had occasion to visit the Book Room in the White House residence.

Ms. HERNREICH. I don't know if I have ever been in the Book Room or not. I have been to a room on the third floor where some gifts are kept once, and I don't know if that's the same room as the Book Room.

Mr. BEN-VENISTE. Did you ever notice what appeared to be billing records in the Book Room?

Ms. HERNREICH. Absolutely not.

Mr. BEN-VENISTE. Has anyone told you who might have put billing records in the Book Room that have been testified about by Ms. Huber and turned over to this Committee upon Ms. Huber's recognition that they might be of interest to us?

Ms. HERNREICH. No.

Mr. BEN-VENISTE. Mr. Ivey.

Mr. IVEY. Thank you.

Mr. Bratton, I wanted to go back to the May 19, 1987 memo that you drafted for the Governor and ask you a few questions about that. Did you draft a number of memos to the Governor? Was this a routine practice?

Mr. BRATTON. Yes.

Mr. IVEY. Well, what was the goal of drafting these types of memoranda?

Mr. BRATTON. Various different goals, but largely to provide information.

Mr. IVEY. Information you thought would be relevant to him?

Mr. BRATTON. Information that I thought would be relevant or sometimes information that I thought might not be relevant, but that some constituent, or some constituent group, or member of the General Assembly thought was relevant and wanted the Governor to know.

Mr. IVEY. In any event, you wanted to be accurate with the information you conveyed?

Mr. BRATTON. I certainly tried to be.

Mr. IVEY. In this memo, I notice when you're discussing the litigation comment that Mr. Tucker raised, you make no mention of any reference to the Rose Law Firm or Hillary Clinton; correct?

Mr. BRATTON. That's correct.

Mr. IVEY. Was there any mention during that meeting of the Rose Law Firm or Mrs. Clinton?

Mr. BRATTON. Not that I have any recollection of.

Mr. IVEY. So did you have any reason to connect her to the conversation that you had with Mr. Tucker at that point?

Mr. BRATTON. To connect the Rose Law Firm to it? No, sir.

Mr. IVEY. Did Mr. Tucker's comment about litigation influence in any way the recommendations that you made to the Governor?

Mr. BRATTON. No, sir.

Mr. IVEY. Let me ask you to take a look at the packet of information that you received I think during the first round of testimony; a series of documents from Doug Strock of the Public Service Commission.

Mr. BRATTON. Yes.

Mr. IVEY. I think at the top of that, there is a document dated January 17, 1985.

Mr. BRATTON. Yes.

Mr. IVEY. Now down near the bottom of the page in paragraph B, there's some writing about, "Eliminate, by law, our jurisdiction over small water companies." Do you see that?

Mr. BRATTON. Yes.

Mr. IVEY. Is this the concept, again, dating back to 1985, that ended up being embodied in the legislation that was ultimately passed and became, I believe, Act 37?

Mr. BRATTON. It's similar.

Mr. IVEY. This again was before the IDC property transaction took place; is that correct?

Mr. BRATTON. I don't know when the IDC transaction took place.

Mr. IVEY. I have nothing further.

Senator SARBANES. This memo that you were just asked about, that's in January 1985?

Mr. BRATTON. Yes.

Senator SARBANES. And that's a memo prepared by the General Counsel of the Arkansas Public Service Commission?

Mr. BRATTON. Yes, sir.

Senator SARBANES. Who's the memo to? Who are those gentlemen who are listed as recipients of the memo?

Mr. BRATTON. I am not sure what position Mr. Creston and Mr. Sullins held at that time. Larry Jegley was another staff attorney. Sullins and Creston are not lawyers. Creston worked on quality of service issues, I believe. I'm not sure what Mr. Sullins' position was at that point in time, had something to do with rates.

Senator SARBANES. In that memo, Strock points out, he says:

The small water companies find it hard to come up with the money, oftentimes, to finance the health and safety-related improvements required by Q of S and health department laws and regulations. They also find it difficult to finance a rate case, with all of its costs and expenses in hiring accountants and lawyers. As a result, we rapidly reach a stalemate in achieving compliance with health and safety measures, because the utility does not have the money and cannot afford to file a rate case to get the money.

Having given this matter a little bit of thought, I see several possible solutions.

And one of the ones he sets out was, "Eliminate, by law, our jurisdiction over small water companies." In the end, that was the approach that was taken; is that correct?

Mr. BRATTON. That's correct.

Senator SARBANES. This suggestion was made back on January 17, 1985?

Mr. BRATTON. That's correct.

Senator SARBANES. Now the Public Service Commission, as I understand it, was opposed to the first bill. They wanted it vetoed because of the constitutionality question that you identified; is that correct?

Mr. BRATTON. That's what was indicated in Mr. Strock's memo and that's my recollection of the conversations with Robert Johnston, who was Chairman of the Commission.

Senator SARBANES. What was their position on the second bill, the one that was put on the call calendar for the Special Session?

Mr. BRATTON. I believe they were generally supportive of that.

Senator SARBANES. In fact, I think Strock prepared a memo in which he concluded this bill would relieve small water companies of the financial burdens of regulation, which include costly rate case expenses which are passed on to the consumers. That was in

1986, when he was talking about proposed legislation for 1987, which included divesting the Public Service Commission of jurisdiction over small water and sewer companies.

So the Public Service Commission from early on, unrelated, I take it, to any of these other matters that have been raised, had a position which was finally carried out in the legislation that was placed on the Call Calendar for the Special Session and enacted into law; is that correct?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. Mr. Bratton—

The CHAIRMAN. Wait, wait, wait. OK. All right, Mr. Chertoff.

Mr. CHERTOFF. Mr. Bratton, I don't want you to lose hold of that memo you were just looking at, and I want to you look at two others. I want you to look at the February 24, 1987 memo, which is the first bill, which is the one that was vetoed, and the final bill, which was passed, which is in a letter marked June 18, 1987.

We'll have someone go and help you find those for a second. Why don't you get those three in front of you. There's the one you just had in front of you. Do you have that one?

Mr. BRATTON. The January 17, 1985?

Mr. CHERTOFF. Right.

Mr. BRATTON. Yes.

Mr. CHERTOFF. Do you have the February 24th letter or memo to Mike Wilson from Tucker?

Mr. BRATTON. No.

Mr. CHERTOFF. Let's stop and find the February 24, 1987 memo and the June 18, 1987 memo with the final bill.

Mr. BRATTON. June 2, 1987?

Mr. CHERTOFF. Yes, the one with the final bill, June 18, 1987. Do you have those three?

Mr. BRATTON. Yes.

Mr. CHERTOFF. First of all, that memo of January 17, 1985, where they first raised the possible solution in terms of rate regulation for these companies, was there legislation enacted in 1985?

Mr. BRATTON. I don't believe there was.

Mr. CHERTOFF. Was there legislation enacted in 1986?

Mr. BRATTON. There would not have been a regular session in 1986.

Mr. CHERTOFF. So that although someone had the idea in 1985 of coming up with a solution to these financial problems, what finally spurred the legislation was when Mr. Tucker got Representative Wilson to put in the legislation, which he describes as proposed legislation for Castle Sewer and Water Corporation; right? That's when it first really hit the legislature?

Mr. BRATTON. I don't have any recollection of there having been legislation introduced in the 1985 session.

Mr. CHERTOFF. So this idea in 1985 didn't result in anything until Mr. Tucker and Mr. Wilson talked about putting in legislation for Castle Sewer and Water. Then it started to get done; right? It's in 1987. The memo is right in front of you; correct?

Mr. BRATTON. That legislation was introduced in 1987 by Mike Wilson.

Mr. CHERTOFF. In fact, this 1985 memo talks about the possibility of dealing with this issue by having, in the last paragraph on

the second page, "a combination of simplified filing requirements and establishment of ranges of acceptable rates." It talked about keeping these small utilities within some kind of simplified rate setting process; right? That's what was being recommended; is that correct?

Mr. BRATTON. I don't think Strock was recommending anything. I think what he seemed to be doing was suggesting that there were several different options available to deal with this problem.

Mr. CHERTOFF. He summarizes at the end by saying eventually I think—actually, he says the one that would be most helpful would be the use of Act 310, which is item number D that talks about kind of a simplified rate setting procedure; right? That's what he says would be the most helpful. He doesn't say completely deregulating and taking them outside of the Public Service Commission is the best. He says having the simplified rate setting every 6 months; right?

Mr. BRATTON. He suggests that an Act 310 process could certainly be an alternative.

Mr. CHERTOFF. That's what the Public Service Commission suggested; right?

Mr. BRATTON. That's what Doug Strock suggested.

Mr. CHERTOFF. I want you to go to that February 24th bill. On page 4 of that bill, which is the one that was vetoed, that was also at least—had some protection for the ratepayers; right, because section 4 limited this deregulation to situations where the utility charged the rate not greater than 10 percent more than the rate charged by a comparable—by a sewer or water utility in a first-class city; right?

Mr. BRATTON. It has a tie there, yes.

Mr. CHERTOFF. So it ties—there is some limitation under the original bill which was vetoed. There's some limitations in the ability of these deregulated utilities to raise rates. They can't go more than 10 percent above a comparable utility within 10 miles; right?

Mr. BRATTON. That's what that provision says.

Mr. CHERTOFF. Now let's go to the one that came out of—to use Mr. Tucker's words, whoever drafted it, came to them from the Governor's office, which is the one that was signed by Governor Clinton on June 12, 1987, which is the last document. Does that bill have any restriction whatsoever on rates, a 10 percent limitation, a 20 percent limitation?

Mr. BRATTON. I believe it simply exempts Class E water companies from jurisdiction.

Mr. CHERTOFF. So for Castle Sewer and Water, the bill that was eventually signed put no limit whatsoever on the amount of rates they could charge; right?

Mr. BRATTON. It put no limitations on the rates that could be charged by any Class C water company.

Mr. BEN-VENISTE. Of which Castle Sewer and Water was one, because you understood the driving force behind this bill was Tucker and Randolph. They made that very clear to you; right?

Mr. BRATTON. I understood at the time that the second legislation was introduced that Castle Sewer and Water had been the utility effected by the first bill, yes, sir.

Mr. CHERTOFF. And that was going to fall within the second bill; right, but unlike the first bill which was vetoed where Castle Sewer and Water—they only asked to go 10 percent above the regular rate, in the second one, the one that was signed, they got more than they asked for originally. They got literally the sky is the limit on rates; right? There was no limitation?

Mr. BRATTON. In the legislation that was eventually signed, the Class C companies were deregulated, that's correct.

Mr. CHERTOFF. So that given that, apparently people who are serviced by this utility now were paying three times what people in Little Rock are paying. If the first bill had been signed, they'd at least only be able to go 10 percent above the Little Rock rate. Now, they're going 300 percent above the Little Rock rate; right?

Mr. BRATTON. If the first bill had been signed, I have no reason to think it would still be locked.

Mr. CHERTOFF. Oh, you think that they might have ultimately removed the cap thereto, but we do know——

Mr. BRATTON. No, sir because I think the legislation was unconstitutional and probably would not——

Mr. CHERTOFF. Mr. Bratton, couldn't you have corrected the constitutional problem and still kept the 10 percent rate cap in? There wasn't a constitutional problem limiting the rate?

Mr. BRATTON. No, sir.

Mr. CHERTOFF. So when this bill was "corrected" at the request of Mr. Randolph and Mr. Tucker, more change than just the constitutional problem, there was a change and you went from some limitation on rates to a total ability to raise rates as high as you want; isn't that correct?

Mr. BRATTON. The companies were completely deregulated if they were Class C companies, that's correct.

Mr. CHERTOFF. And the State Constitution didn't make you do that; right?

Mr. BRATTON. No, sir.

Mr. CHERTOFF. You are Chairman of the Public Services Commission. Do you get complaints from people who are serviced by this utility about the rates?

Mr. BRATTON. I think that we have gotten one or two complaints about it.

Mr. CHERTOFF. What do you tell them? Tell them it's out of our hands?

Mr. BRATTON. Tell them it is not within the jurisdiction of the Commission, yes.

Mr. CHERTOFF. When you wrote this memo of May 19, 1987, which is the memo you wrote to the Governor in order to discuss with him sewer district regulation, did you discuss what to the ratepayers would be the most important issue, which is namely whether they're going to be paying 10 percent over Little Rock rates or 300 percent over Little Rock rates?

Mr. BRATTON. I discussed in the memo what's in the memo.

Mr. CHERTOFF. Now look, Mr. Bratton, you were not merely a messenger, you're the counsel; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. You're supposed to give advice?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. You're supposed to give legal advice?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. Did you have discussions with the Governor after you sent the memo in about what was in the memo?

Mr. BRATTON. I probably did.

Mr. CHERTOFF. Did you talk to him about this litigation issue?

Mr. BRATTON. I don't have any recollection of what the specifics of the conversation were. It's been almost 10 years ago.

Mr. CHERTOFF. Are you trying to tell us that in your transmitting this memorandum, which was to go to the Governor so he could take action, all you were doing was serving as a conduit of information from Tucker?

Mr. BRATTON. All this memo does is pass on the information that I got from Tucker, which is what I was asked to do in preparing this memo. Did I have subsequent conversations with the Governor about this issue? I am sure I did. Can I tell you today what those conversations 10 years ago were? No, sir, I can't.

Mr. CHERTOFF. Do you have any other memos on your research or information gathering?

Mr. BRATTON. Do I have memos?

Mr. CHERTOFF. Yes, are there any other memos that you wrote to the Governor after he asked you to gather the facts on this transaction?

Mr. BRATTON. On this transaction?

Mr. CHERTOFF. Yes.

Mr. BRATTON. I have no idea.

Mr. CHERTOFF. This is the only one you wrote about this transaction.

Mr. BRATTON. I have no idea.

Mr. CHERTOFF. Well, do you remember writing another one?

Mr. BRATTON. No, sir, but I didn't remember specifically writing this one until it was shown to me sometime recently.

Mr. CHERTOFF. You knew that Randolph and Tucker were perfectly capable of talking to the Governor themselves. They did not need you to pass a message on?

Mr. BRATTON. The Governor asked me to do something, and that was specifically to call Mr. Tucker to find out the background on the legislation and to transmit to him what I found out the background on the legislation was, and that's what the May 19th memo does, sir.

The CHAIRMAN. Let me ask you something. There comes a point in time, then, there's a legislative process initiated. You, I think, testified before that the Governor's office itself did not draft this?

Mr. BRATTON. I testified that I don't have any recollection of having drafted it.

The CHAIRMAN. Now take a look at the bill that eventually passed. You have it in front of you? Would it be customary for that kind of bill, particularly if you are responding to what was a constitutional problem heretofore that—you explained that you would review this as counsel; right?

Mr. BRATTON. I'm sure I did.

The CHAIRMAN. Would it be customary, "it" being a matter affecting the regulations by the Public Service Commission, that you would have input from the Public Service Commission?

Mr. BRATTON. Yes.

The CHAIRMAN. That's customary; right?

Mr. BRATTON. Yes, Mr. Chairman, that would have been customary.

The CHAIRMAN. Do you find it strange that in your discussions with Tucker, there's nothing with respect to rate impacts, et cetera, in a bill affecting rates that can or can't be charged, nothing at all. You never discussed that with him?

Mr. BRATTON. I don't recall the discussion with Mr. Tucker with any specificity, Mr. Chairman. I would——

The CHAIRMAN. The memo doesn't have anything—if you had discussed rates, would rates have been in there?

Mr. BRATTON. Yes.

The CHAIRMAN. Do you find it strange instead of constructing a constitutional bill which would have dealt with the impediment—the impediment was what? It dealt with one specific area as opposed to being general; is that correct?

Mr. BRATTON. That's generally correct, yes, sir.

The CHAIRMAN. This bill doesn't do that. This bill goes beyond. It corrects that deficiency. You could have corrected that very easily by including that this would be available to all of these Class C companies, so it's not just one, you have no constitutional impediment; is that correct?

Mr. BRATTON. Well, I don't know how many Class C companies are located within 10 miles or 20 miles of a Class 1 city——

The CHAIRMAN. I understand that. You could have corrected that constitutional impediment without the necessity of dropping any limiting provisions as it relates to rate differentials. Didn't you find it strange—did the PSC say anything to you? They went along and said just drop so that you can charge—any Class C company can charge anything it wants?

Mr. BRATTON. I think it is likely that the PSC drafted the second draft of the legislation from looking at it. It does not appear to be in a format consistent with that that would have been drafted by legislative counsel, so I think there is a good possibility that the PSC staff drafted that legislation.

The CHAIRMAN. The first bill has a limitation that you can only charge 110 percent, 10 percent more than is being charged in the adjoining city; right?

Mr. BRATTON. That's correct.

The CHAIRMAN. The second one, what kind of limitation does it have?

Mr. BRATTON. It is a complete deregulation of Class C water companies.

The CHAIRMAN. No limitations?

Mr. BRATTON. That's correct.

The CHAIRMAN. You are Chairman of the Public Service Commission now?

Mr. BRATTON. That's correct.

The CHAIRMAN. So you have an understanding approximately of what rates are in this area and so when Counsel said to you, you know, this company now is charging three times or 300 percent or thereabouts what the people in Little Rock pay——

Mr. BRATTON. I don't regulate the rates for the City of Little Rock.

The CHAIRMAN. But they pay three times that rate?

Mr. BRATTON. I don't know what they pay.

The CHAIRMAN. You have no idea? Who regulates it?

Mr. BRATTON. Who regulates the City of Little Rock?

The CHAIRMAN. Yes, the rates, the PSC. You have nothing with respect to the rates?

Mr. BRATTON. We regulate only the private water companies of which there are a handful.

The CHAIRMAN. So the people who were previously being served, right, were they being served by Little Rock at one point in time?

Mr. BRATTON. The people who were being served by Castle Sewer and Water?

The CHAIRMAN. Yes, out in that region. Where were they getting their water?

Mr. BRATTON. I'm not sure which people you're talking about.

The CHAIRMAN. The people in that area, in the Castle Grande area or the Castle Sewer area, would any of them be getting water from an adjacent city?

Mr. BRATTON. I am not sure whether that utility had wells or whether it purchased water from some other source.

The CHAIRMAN. OK. I would just point out again that you go from one bill limiting the rates to 110 percent to the second bill which has absolutely no limitation; there's no discussion of that in this memo, no discussion about what the impact of proposed legislation will be, and you don't recall any that anybody said to you, this Class C company can charge whatever they want?

Mr. BRATTON. No, sir, I don't recall any specific discussions on that.

The CHAIRMAN. Wouldn't that be something that you'd be interested in, what impact would this legislation have on ratepayers?

Mr. BRATTON. It may well be, Senator, that the reason the cap was removed was for other companies other than Castle, that 110 percent cap would not have addressed the problems that Mr. Strock had identified in his earlier memos—

Mr. CHERTOFF. Name one besides—

Mr. BRATTON. I would suggest that is entirely possible if that legislation was drafted by the Commission, which I believe may—

Mr. CHERTOFF. Name one besides Castle Water and Sewer.

Mr. BRATTON. I don't regulate them. I didn't keep up with what the companies were at that point in time. Part of the problem with the small water and sewer companies was even identifying how many of them were out there.

The CHAIRMAN. You give them a blank check is what happened. You first talked about a constitutional prohibition because it was only with respect to one specific company. Now, you opened it up that that specific company in every Class C; right? Every Class C has the ability to charge whatever rate it wants, whatever the traffic can bear?

Mr. BRATTON. The legislation that was signed did completely de-regulate Class C water companies, Senator, and I would suggest again that I think one reason the cap may have been removed was to give other companies, other than Castle and Sewer, greater flexi-

bility that they may have needed, and may have had absolutely nothing to do with Castle Sewer and Water's situation.

The CHAIRMAN. Have you ever searched the record to see if you have any memorandum with respect to this legislation over at the PSC? I understand you weren't there then, but have you checked the records to see if there's any that would give you any reason to believe that the Public Service Commission, that they entertained that thought?

Mr. BRATTON. Based on Mr. Creston's memo of January 1985, they considered that as one option—

The CHAIRMAN. And the fact of the matter is he concludes, and we read the conclusion, it doesn't come out anywhere near what you suggested. He actually talks about keeping a control and that it would be reviewed on a 6-month basis and streamlining the process. Let's not go through—he outlines a series of possibilities, and his conclusion is far different than total taking off, absolutely no filing whatsoever and having no ability to control the rates whatsoever; wouldn't you admit that?

Mr. BRATTON. Mr. Creston suggested he thinks Act 310 procedures or something similar to would be his recommendation.

The CHAIRMAN. So you didn't undertake his recommendation, nor did the Commission. Now, I'm not asking you to refer to this memo. Are you aware of any other memoranda where there was a discussion as it relates to total deregulation, taking off any controls as it relates to Class C companies?

Mr. BRATTON. Any documents that would have had anything to do with this legislation have been provided to this Committee under a subpoena earlier this summer.

The CHAIRMAN. So you're not aware of any. Have you had an opportunity to look through the files as Commissioner for any documentation in attempting to comply with the Committee's subpoena?

Mr. BRATTON. I did not personally search the file. I looked at the material that was compiled.

The CHAIRMAN. Mr. Bratton, I understand you did not personally. Did you cause or ask people under your direction to search the files to see if there was any information pertinent to this particular legislation?

Mr. BRATTON. Yes, sir.

The CHAIRMAN. And did you find any additional information that would have indicated that there were discussions with respect to rates, et cetera?

Mr. BRATTON. I am not aware of any other documents, other than that which have been provided to the Committee that are in the files of the Commission at this point.

The CHAIRMAN. So there is no information that the Committee would have available to it through the Public Service Commission or that you are aware of that ever suggested that the Public Service Commission consciously itself and deliberately supported legislation that would take off any limitations as it relates to the rates that would be charged, which is what this bill did?

Mr. BRATTON. Mr. Chairman, it is my general recollection that I had some discussions with Commission staff or the Chairman of the Commission regarding whether a cap was appropriate.

The CHAIRMAN. Really? Well, now, we are getting someplace. You actually spoke to somebody about this, about taking off the cap on the rates?

Mr. BRATTON. I have a general impression that I probably had a discussion about that. I can't tell you for sure, but I have a general impression that that probably occurred.

The CHAIRMAN. Who would you have discussed that with? You're counsel to the Governor. Who would you have discussed that with, not a staff lawyer?

Mr. BRATTON. I probably would have discussed it with the Chairman of the Commission, if I discussed it with anyone.

The CHAIRMAN. Who's the Chairman of the Commission?

Mr. BRATTON. Robert Johnston, and I'm not sure I did, but it is possible that I did.

Mr. CHERTOFF. Is that the same Mr. Johnston you told the Governor would be inclined, would try to be of some help in trying to resolve the problem?

Mr. BRATTON. Yes.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Is the Public Service Commission considering reregulating small water companies?

Mr. BRATTON. No, sir.

Senator SARBANES. Is there a clamor in Arkansas to reregulate the small water companies?

Mr. BRATTON. There is an issue involving one small water company that comes up every session and there's legislation introduced and so far it has not passed.

Senator SARBANES. How about with respect to the other small water companies?

Mr. BRATTON. No, sir.

Senator SARBANES. Apparently not. So the deregulation was a public policy commission that was taken, is that correct, that has remained in place now for almost 10 years?

Mr. BRATTON. That's correct.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Bratton, was it the case that someone representing Castle came to you and said we made a mistake with this legislation, please have the Governor veto it because we don't like the 10 percent cap so we can come back later and write some new legislation that doesn't have a 10 percent cap?

Mr. BRATTON. Certainly not.

Mr. BEN-VENISTE. Nothing like that occurred?

Mr. BRATTON. Absolutely not.

Mr. BEN-VENISTE. And with respect to the limitation of the 10 percent cap, it is your recollection that that was the result of now broadening the legislation to cover other small water and sewer companies that would have been affected by a 10 percent cap?

Mr. BRATTON. I think that is entirely possible. I cannot tell you the specifics of any conversation I had with Johnston or anyone else at the Commission, but I do think that I did have some conversations involving whether the 10 percent cap would remain appropriate if the legislation would be broadened to include all Class C companies.

Mr. BEN-VENISTE. So to follow along Mr. Chertoff's line of thinking here, let me ask you whether there was any discussion with Mr. Tucker or others involved in Castle Sewer and Water to suggest that we don't like the cap, we want that eliminated from the next legislation.

Mr. BRATTON. Not that I have any recollection of. If I could expand just for one moment, the reason I think that I probably had some discussions regarding the cap and that there was a conscious decision to remove the cap would be that if a small company had to make a significant investment to upgrade its plant, then a 10 percent override provision would not necessarily be of any significant benefit. If a company was only having to adjust to inflation concerns, then a 10 percent cap might well be appropriate, but if a company was placed in the position of having to comply with health department rules or Clean Water Act rules and had to make significant upgrades to the system, then you would be right back into a regulatory situation with the attendant costs that would be available there.

Mr. BEN-VENISTE. Now that we have descended into the minutia of sewer legislation in Arkansas a decade ago, let me ask you to take a look at the bill that was actually passed and see whether there was a provision contained in that bill that was not contained in the original bill that provided for any district covered by the deregulation to exercise the power of eminent domain over the water and sewer company serving that district. And I would direct your attention to Section 3, paragraph N, it looks like.

Mr. BRATTON. Yes.

Mr. BEN-VENISTE. Do you see that reference?

Mr. BRATTON. Yes, I do.

Mr. BEN-VENISTE. Was that in the original bill?

Mr. BRATTON. I don't believe it was.

Mr. BEN-VENISTE. Would you explain to all of us interested in water and sewer history in Arkansas in 1985 and 1986 what that eminent domain provision provided for?

Mr. BRATTON. Well, it appears to authorize some type of municipal improvement district or special improvement district to condemn the property of any water or sewer utility that was located within the boundaries of that improvement district which was exempt from the definition of public utility.

Mr. BEN-VENISTE. And again, that provision for eminent domain is included in Section 4, paragraph 1, which also provides for eminent domain, condemning any water or sewer utility found within the boundaries of that district covered by this legislation?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. So for the historians of water and sewer regulatory law in Arkansas in the late 20th century, this provision would provide for the residents of a water and sewer district petitioning to get together to condemn and take over a water and sewer utility, such as the one in question here, Castle, in the event that they felt that it was appropriate to do so?

Mr. BRATTON. That's my understanding of that language.

Mr. BEN-VENISTE. So instead of a cap, you have the right of eminent domain if things got out of hand to the extent that there was

a need to condemn the utility because they charged too much or did something else that the people in their district didn't like?

Mr. BRATTON. These provisions certainly appear to give the customers of the utility an alternative to address what they thought to be excessive rates or other problems.

Mr. BEN-VENISTE. Now all of this, the issues about Castle Sewer and Water, were covered by the House of Representatives last summer. Is there anything that has come out today that you are aware of that sheds any new light on whether Governor Clinton acted appropriately in connection with the water and sewer legislation in the 1987 legislative session?

Mr. BRATTON. I'm certainly not aware of anything that suggested he acted inappropriately, no, sir.

Mr. BEN-VENISTE. Mr. Ivey.

Mr. IVEY. Mr. Bratton, let me just follow up on the point you were making about eminent domain. Do you have the June 24, 1986 memorandum from Doug Strock to Mr. Clark? The subject is proposed legislation for 1987.

Mr. BRATTON. I'm sorry, what was the date?

Mr. IVEY. June 24, 1986.

Mr. BRATTON. Yes.

Mr. IVEY. Attached to this memorandum is a proposed legislation with respect to the deregulation of public utilities. Is it on the back of your copy there?

Mr. BRATTON. Yes.

Mr. IVEY. Could you flip through the proposed bill to pages 3 and 4—I'm sorry, pages 3 and 5, Sections 3 and 4 in that bill. Are those provisions substantially the same as the Sections 3 and 4 in the legislation that was actually enacted?

Mr. BRATTON. They appear to be so.

Mr. IVEY. This is the same power of eminent domain that was included in the final legislation.

Mr. BRATTON. Yes, it is.

Mr. IVEY. And this June 24, 1986 memorandum was written before, to the best of your knowledge, the Castle Sewer and Water issue was on your radar screen at all?

Mr. BRATTON. Yes, sir, and it does suggest that my general impression that the PSC possibly drafted the second piece of legislation is probably accurate.

Mr. IVEY. Yes, sir. Now go through that packet. There's another document I'd like you to take a look at. It's a letter dated May 6, 1987, and it's addressed to Senator Charlie Cole Chaffen—

Mr. BRATTON. Chaffen.

Mr. IVEY. I take it he was a Member of the Arkansas State Senate at that time?

Mr. BRATTON. She was.

Mr. IVEY. Oh, sorry. All right. Now go down to paragraph 4. Are you with me?

Mr. BRATTON. Yes.

Mr. IVEY. You mentioned earlier the issue of the difficulty in purchasing new plants. Is that discussed here in the letter from Doug Strock to Senator Chaffen?

Mr. BRATTON. Yes.

Mr. IVEY. Is that the issue you were raising just a few minutes ago, often the small water company may need to purchase new plants such as a water tower or other equipment or may need to replace existing—

Mr. BRATTON. Yes, it's the same issue.

Mr. IVEY. And the issue was the need for money to make these capital improvements?

Mr. BRATTON. To make major upgrades to a system, yes, sir.

Mr. IVEY. In the next paragraph, it says, "The reasons the regulation aggravates the small water utilities problems is as follows" and there's a long paragraph on page 2. Do you see that?

Mr. BRATTON. Yes.

Mr. IVEY. That goes through the reasons that regulation was of concern to small utilities at that time?

Mr. BRATTON. Yes.

Mr. IVEY. And the paragraph after that says, "For the foregoing reasons, regulation by the PSC is of little benefit to the small water utilities or their customers because regulation does not solve the basic needs of those small water companies." Do you see that?

Mr. BRATTON. Yes.

Mr. IVEY. Last question here. If you could go to page 3 of that same letter.

Mr. BRATTON. Yes, sir.

Mr. IVEY. Look at the second paragraph. Could you read that second paragraph?

Mr. BRATTON. It says:

Deregulation should be coupled with giving the power to suburban improvement districts to condemn small water and sewer companies. The reason is if a small water company is deregulated and is not being run to the satisfaction of its customers, they could then form an improvement district and force the sale of the utility for the district and run the utility to suit themselves.

Without the power of condemnation, the ratepayers would have little effective recourse if the management were unresponsive or charge rates which were unconscionable, both deregulation and giving the power of eminent domain to suburban improvement districts would require legislation.

Mr. IVEY. And this is under the heading "Possible Solution"?

Mr. BRATTON. Yes.

Mr. IVEY. Is the final legislation that was enacted, does it reflect the possible solution that Mr. Strock wrote about in this May 6, 1987 letter?

Mr. BRATTON. Yes, it does.

Mr. BEN-VENISTE. So if I understand, Mr. Bratton, the legislation that was ultimately passed was legislation recommended as early as 1985, in substance, by the Public Service Commission; correct?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. There was a very good reason to deregulate the small water and sewer districts; correct?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. And the concern over rate increases was met not with this unfettered opportunity without recourse for the utilities to raise their rates, but balanced by the right of eminent domain and the opportunity to form independent water districts and take over the utilities by the residents of those districts if they were unhappy?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. So rather than say that there was a change from a cap to a complete freedom without recourse, in fact, there was freedom and recourse?

Mr. BRATTON. There was an alternative that the customers could exercise.

Mr. BEN-VENISTE. Without getting back all the way to Jean Valjean and the sewer systems in place historically in other places in the world, with respect to Arkansas, this system has been operating for a decade now for 10 years or so, and it has not been subject to revision or subject to proposals for new legislation to change it?

Mr. BRATTON. As I indicated, there have been proposals to make some alterations to it that have come out of the one particular situation, but those proposals have not passed.

Mr. BEN-VENISTE. You mentioned that Little Rock is not within your purview of regulation at the Public Services Commission now; is that correct?

Mr. BRATTON. That's correct.

Mr. BEN-VENISTE. Now who regulates Little Rock?

Mr. BRATTON. Almost all municipal utilities are self-regulating in that they are operated by the city government and the rates are set by the city. The City of Pine Bluff is served by a private water company and we have jurisdiction over that municipality, but I believe that's the only municipality in the State in which we have any jurisdiction over the municipal water rates.

Mr. BEN-VENISTE. So under any circumstances comparing Little Rock to the Castle district would be comparing apples and oranges in terms of regulation?

Mr. BRATTON. At the very least, apples and oranges.

Mr. BEN-VENISTE. I have nothing further.

Mr. CHERTOFF. Mr. Bratton, just before we move on to something else, Little Rock is a municipally-operated system?

Mr. BRATTON. Yes, sir.

Mr. CHERTOFF. It's not for profit?

Mr. BRATTON. I don't know that you can say it is "not for profit."

Mr. CHERTOFF. It's not a private company; right?

Mr. BRATTON. It is not a private company. There are municipal operated utilities where municipal utility rates are used to subsidize other services provided by a city government, so they sometimes operate it above cost.

Mr. CHERTOFF. But they're not owned by guys like Randolph and Tucker; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. And with regard to this power of eminent domain, just so we understand what alternative was left open to the people who were serviced by Castle Sewer and Water for whom I assume their monthly utility rate is a matter of more than academic interest, they probably have to sit down every month and write a check out, in order to exercise eminent domain, they would have to band together, form an improvement district, and agree to pay the utility for the cost of the property. If the utility didn't agree with the amount, they would have to go to court and fight it out in court; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. That's what the alternative of eminent domain is; is that right?

Mr. BRATTON. That is correct.

Mr. CHERTOFF. Finally, just so we keep all eyes on the ball here, which is the interplay with the Governor's office and the Governor's veto, with all these memos in the files of the Public Services Commission, the only two memos I've seen that discuss the arguments in favor of changing the veto—which the Governor did change; is that right? He did not veto the second legislation?

Mr. BRATTON. He did not change the veto. He signed a second piece of legislation.

Mr. CHERTOFF. The only written memos regarding that issue are the memo which conveys Mr. Randolph's cryptic mentioning of the \$33,000 meeting, and your extended discussion of the litigation that can be avoided, including your own assumption about whether the litigation would touch on the validity of the mortgage. Do you know of any other written memos that were submitted to the Governor laying out the arguments on this besides these two?

Mr. BRATTON. I don't know whether there were other written memoranda or not. From time to time, I would write shorthand written memorandum, most of which I threw away when I left the Governor's office. It was also very common for me to have discussions on these issues verbally with the Governor rather than writing it all out in memo form.

Mr. CHERTOFF. So the short answer to my question is that you don't know of any other written memos besides the two you've seen here; right?

Mr. BRATTON. I have no personal knowledge at this point of any other written memos, although I am sure there were other discussions about this issue.

Mr. CHERTOFF. But you can't remember them; right?

Mr. BRATTON. No, sir. I'm sure there would have been a discussion about what items to include in a session. That would have been routine.

Mr. CHERTOFF. And one of those was this. Now, Mr. Bratton, let me turn your attention to this notation of July 2, 1986, from Beverly Bassett Schaffer, with which we began your examination today, and again, what I'm trying to understand here in your position as counsel—I mean, we've already seen that you saw communication where Randolph, what would have to be considered in a pretty blatant way, draws a connection or tries to draw a connection between something he wants the Governor to do officially and something to do with \$33,000 2 years before.

Here we have Ms. Bassett saying, "Madison Guaranty is in pretty serious trouble. Because of Bill's relationship with McDougal, we probably ought to talk about it." What did you understand was the significance of Bill's relationship with McDougal as the reason you ought to talk to Beverly Bassett about this?

Mr. BRATTON. I don't know that I gave it any significance.

Mr. CHERTOFF. When you saw this, did you say in substance, "Beverly, look, whatever the Governor's personal things are, we don't consider that here. All we talk about is the public policy and the issues that concern the citizens of the State of Arkansas." Did you say anything like that to Beverly Bassett?

Mr. BRATTON. I didn't need to. She and I had had enough discussions during the time that she had been in charge of the Securities Department on sensitive issues that I knew she understood we were not going to ask her to take inappropriate actions, and that she would not be expected to read between the lines and figure out what sort of favorable dealings she was supposed to have with people who might have known the Governor or might have made campaign contributions. I didn't need to tell her that.

Mr. CHERTOFF. But you didn't wonder, then, why she made a point of asking for a meeting not because of some distress to the citizens of Arkansas or jeopardy to the investors?

Mr. BRATTON. I didn't read anything into that comment. She and I had been talking about Madison off and on for some period of time before that.

Mr. CHERTOFF. And you had been talking to Governor Clinton about it?

Mr. BRATTON. I had periodically made him aware that there were problems with Madison, yes, sir.

Mr. CHERTOFF. Were there any other instances in which there were regulatory problems Ms. Bassett encountered as head of the Arkansas Securities Commission where she told you that she was bringing it to your attention because the people had a relationship with the Governor?

Mr. BRATTON. There were probably situations, not necessarily involving a savings and loan, but there were probably situations where, in her capacity as Securities Commissioner, that she would make me aware of some action that the department intended to take against a broker-dealer or bond house because she knew that the individuals who might be the subject of that action would likely call the Governor's office when they found out that some unfavorable action had been taken in a case involving them.

Mr. CHERTOFF. Can you think of one right now?

Mr. BRATTON. I can think of probably several.

Mr. CHERTOFF. Was there one involving Lasater & Associates?

Mr. BRATTON. I don't recall a specific conversation involving Mr. Lasater that I can tell you about. I know we've had some conversations on more than one occasion about matters involving Lasater's company.

Mr. CHERTOFF. Tell us about the conversations.

Mr. BRATTON. I don't recall the specifics of it.

Mr. CHERTOFF. Well, give us generally. Was it that Lasater was being investigated or having problems in terms of his conduct of the securities activities?

Mr. BRATTON. I'm sure it had to do with that generally.

Mr. CHERTOFF. Were you aware that Lasater had a relationship with the Governor?

Mr. BRATTON. I think I was generally aware that he might have made some campaign contributions. I don't know that I considered that they had a relationship of any sort.

Mr. CHERTOFF. Do you know if Mr. Lasater was ever at the Mansion, for example?

Mr. BRATTON. I don't know.

Mr. CHERTOFF. Do you know whether he ever saw the Governor in person outside of a fundraising event?

Mr. BRATTON. I have no idea.

Mr. CHERTOFF. What?

Mr. BRATTON. I don't know.

Mr. CHERTOFF. Do you know if they had a social relationship?

Mr. BRATTON. I never had any impression that they had a social relationship.

Mr. CHERTOFF. Did Governor Clinton ever travel on Lasater's airplane?

Mr. BRATTON. I don't know.

Mr. CHERTOFF. Did you ever try to reach the Governor through Mr. Lasater?

Mr. BRATTON. Did——

Mr. CHERTOFF. Did you ever try to reach the Governor through Mr. Lasater?

Mr. BRATTON. No.

Mr. CHERTOFF. Do you know whether Governor Clinton and Mr. Lasater took trips together?

Mr. BRATTON. Not that I'm aware of.

Mr. CHERTOFF. Well, these discussions about Lasater, why would Ms. Bassett have come to you and explained to you that there were issues in her jurisdiction as a securities regulator involving Mr. Lasater?

Mr. BRATTON. She periodically made me aware of decisions that the department was going to take involving people who were regulated by or licensed by the board. Was Lasater one of them at one point? Yes. Were there others? Yes.

Mr. CHERTOFF. Did Lasater do a lot of business with the State?

Mr. BRATTON. I don't know how much business Lasater did with the State.

Mr. CHERTOFF. Did he do bond underwritings?

Mr. BRATTON. He did some bond business.

Mr. CHERTOFF. Did you have responsibility for the Arkansas Development Finance Authority in your liaison function?

Mr. BRATTON. No, I did not.

Mr. CHERTOFF. Who had that?

Mr. BRATTON. Bob Nash.

Mr. CHERTOFF. And that was even before Bob Nash became the head of that; right?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. So you can't, as you sit here, remember any particular reason that you had contact with Ms. Bassett about Mr. Lasater; is that your testimony?

Mr. BRATTON. No, sir. My testimony is that that is one example of other regulatory or disciplinary actions, if you will, that Ms. Bassett made me aware of that the department was going to take. There were others that involved other individuals or companies that were regulated by her department. It was common practice if they were going to take a significant disciplinary action, that the Governor's office didn't want to read about it in the newspaper.

Mr. CHERTOFF. They wanted a heads-up?

Mr. BRATTON. That the Governor expected to be aware when a department was going to take some major activity, not read it in the newspaper.

Mr. CHERTOFF. And you told the Governor, therefore? You would inform him of what Ms. Bassett told you?

Mr. BRATTON. Yes, sir, or other agencies that I had a liaison relationship with.

Mr. CHERTOFF. When were you in this counsel function, for what years?

Mr. BRATTON. From 1984 through the early part of 1989.

Mr. CHERTOFF. During this period, do you remember regulatory action being taken against Mr. Lasater?

Mr. BRATTON. I don't remember specifically what actions were taken. I do know at some point in there that there were actions taken, either by NASD or by the State, or both.

Mr. CHERTOFF. NASD is the National Association of Securities Dealers?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. That's a Federal, or it's kind of a private body but it's under Federal—

Mr. BRATTON. Self-regulation.

Mr. CHERTOFF. They took some regulatory action against Mr. Lasater?

Mr. BRATTON. That's my general impression.

Mr. CHERTOFF. Did you tell the Governor about it?

Mr. BRATTON. I probably did.

Mr. CHERTOFF. Did you have discussions with the Governor about whether Lasater—the impact of that on any State business Lasater either had done or was going to do?

Mr. BRATTON. I don't recall.

Mr. CHERTOFF. You don't recall? It wasn't a big issue?

Mr. BRATTON. I don't recall the specifics of the conversation.

Mr. CHERTOFF. Did Ms. Bassett tell you that Mr. McDougal was the person making recommendations for appointments to the Arkansas Savings and Loan Board?

Mr. BRATTON. I don't know that Ms. Bassett told me that. Was I generally aware that McDougal probably had an interest in that? I probably was.

Mr. CHERTOFF. Did you know that his interest was heard when it came time to make appointments to the Bank Board and the Savings and Loan Board?

Mr. BRATTON. I don't know whether it was heard or not.

Mr. CHERTOFF. You don't? You don't know whether he was influential in terms of appointments to the Bank Board and the Savings and Loan Board?

Mr. BRATTON. I don't have any personal knowledge of that, no.

Mr. CHERTOFF. How about knowledge acquired from somebody else in the course of your official duties?

Mr. BRATTON. I don't have any specific recollection of conversations about that.

Mr. CHERTOFF. How about a general recollection? Come on, Mr. Bratton.

Mr. BRATTON. Not beyond what I have already indicated, which was that I knew McDougal periodically had some interest in those appointments.

Mr. CHERTOFF. But it wasn't an unrequited interest. It was an interest that he was able to consummate because when he asked

to have people appointed, he was the one whose recommendation was heard; right?

Mr. BRATTON. I know that Mr. Latham, who worked at Madison, received an appointment.

Mr. CHERTOFF. Did there come a time when you were hearing about all these capital problems at Madison Guaranty, that it made you uncomfortable to think that Mr. McDougal might be a person who had some influence in recommending appointments?

Mr. BRATTON. No, sir.

Mr. CHERTOFF. Did Mr. McDougal have a reputation in the mid-1980's of being kind of shady, kind of a wheeler-dealer?

Mr. BRATTON. I'm sure there were some that would characterize him in that regard.

Mr. CHERTOFF. Did you warn the Governor to stay away from Mr. McDougal?

Mr. BRATTON. No, sir, I don't think I warned the Governor to stay away from Mr. McDougal.

Mr. CHERTOFF. Did you advise the Governor that he might not be a person who ought to have influence in making appointments?

Mr. BRATTON. I don't recall any conversations with the Governor about McDougal and the appointments process.

Mr. CHERTOFF. Let me show you DKSX 13314. It is from the Governor's office. And it says, "Jane Re: November-December appointments." It is a Xerox of two pieces of paper. On the second page, number 5, it says, "Banking Board, ask McDougal." Do you know whose handwriting this is? Do you recognize this?

Mr. BRATTON. I don't believe so.

Mr. CHERTOFF. It doesn't look familiar to you? Is it Mr. Clinton's handwriting?

Mr. BRATTON. No.

Mr. CHERTOFF. Is it Betsey Wright's handwriting?

Mr. BRATTON. I don't believe it is.

Mr. CHERTOFF. Is it your handwriting?

Mr. BRATTON. No.

Mr. CHERTOFF. And "Banking Board, ask McDougal," did you understand that on the Banking Board, on appointments, they got cleared through McDougal?

Mr. BRATTON. I never had any impression that any appointments were cleared through McDougal.

Mr. CHERTOFF. That he was asked about them?

Mr. BRATTON. I don't recall at this point knowing whether Mr. McDougal was asked about Bank Board appointments or not.

Mr. CHERTOFF. Was Mr. Lasater asked about securities appointments?

Mr. BRATTON. Not that I have any knowledge of.

Mr. CHERTOFF. Did you hear from somebody else that he was?

Mr. BRATTON. No, sir. I do know that based on a letter I was shown during a deposition, that he had written a letter to the Governor regarding Beverly Bassett Schaffer's appointment.

Mr. CHERTOFF. And that's all you know?

Mr. BRATTON. Yes, sir.

Mr. CHERTOFF. Before I open up into the next line, since my time is just about up.

The CHAIRMAN. We're going to continue.

Senator SARBANES. Could I ask what the date of this memo is?

Mr. CHERTOFF. We don't know what the date is. It's November-December but it's undated as to year, and since no one has owned up to authorship, we're attempting to figure out the answer.

Now let me continue along the line of Mr. McDougal and Madison. Did there come a time that you were aware that the Arkansas Development Finance Authority or the Arkansas Housing Agency was leasing space in one of Mr. McDougal's buildings?

Mr. BRATTON. Yes.

Mr. CHERTOFF. And that was a decision made by who initially?

Mr. BRATTON. State Building Services.

Mr. CHERTOFF. Who was the person in charge of that?

Mr. BRATTON. Paul Mallard.

Mr. CHERTOFF. Who was the director of the agency at that time?

Mr. BRATTON. Of which agency?

Mr. CHERTOFF. The Housing Agency.

Mr. BRATTON. I believe that Wooten Epes was the Director at that time.

Mr. CHERTOFF. So it was his agency to be put in this building?

Mr. BRATTON. That's correct.

Mr. CHERTOFF. He had an objection to it, didn't he?

Mr. BRATTON. That is my recollection.

Mr. CHERTOFF. He objected because it was an unsafe area?

Mr. BRATTON. He objected to it, and that was at least one of his stated objections.

Mr. CHERTOFF. What were his other stated objections?

Mr. BRATTON. I don't recall at this point.

Mr. CHERTOFF. Was one that there was a possibility of getting space at a cheaper rate elsewhere?

Mr. BRATTON. I don't recall.

Mr. CHERTOFF. Well, you indicated that it was one of his stated objections. Obviously, you have a recollection there were other stated objections. What were they?

Mr. BRATTON. I don't recall what the other objections were.

Mr. CHERTOFF. Well, was it price?

Mr. BRATTON. I don't recall what the other objections were.

Mr. CHERTOFF. Safety was one; right?

Mr. BRATTON. That's the only one I recall. It is my recollection there were other objections he had. I don't recall what they were.

Mr. CHERTOFF. What was Mr. Mallard's argument in favor of leasing in Mr. McDougal's building?

Mr. BRATTON. I don't recall whether—what the basis of the SBS decision was.

Mr. CHERTOFF. Now this was in 1984?

Mr. BRATTON. Somewhere along in that period of time. I don't recall specifically.

Mr. CHERTOFF. How did this—who resolved this dispute?

Mr. BRATTON. It is my general impression that SBS had selected that space and perhaps had already executed a contract for the State to lease it or was on the verge of doing so. Mr. Epes didn't want to move there, and the decision remained the decision made by SBS.

Mr. CHERTOFF. Well, who resolved the dispute? Didn't it go up to the Governor's office?

Mr. BRATTON. The issue was discussed in the Governor's office, and Mr. Mallard's decision remained the binding decision.

Mr. CHERTOFF. Who discussed it in the Governor's office?

Mr. BRATTON. I had probably some discussions with both Mallard and Epes, probably Betsey Wright had some discussions with both of those. I'm sure Betsey and I probably had some discussions with the Governor about it.

Mr. CHERTOFF. What did you and Betsey discuss about it?

Mr. BRATTON. At this point, all I recall is that there was a dispute about Wooten not wanting to move his agency into the space that SBS had leased for him and that he ultimately moved there. I don't recall anything further about it, other than one of his stated reasons for not wanting to move was that he thought it was not a safe area or he asserted that.

Mr. CHERTOFF. The Governor made the final decision?

Mr. BRATTON. If by not overriding Mr. Mallard's decision the Governor made a decision, then you may characterize it as the Governor's making the decision. Mr. Mallard made a decision; Mr. Epes hoped that decision would be overturned. It was not.

Mr. CHERTOFF. When did you first become aware that the Governor and Mrs. Clinton had a business relationship involving land with Mr. McDougal?

Mr. BRATTON. I don't recall.

Mr. CHERTOFF. Was it in 1984?

Mr. BRATTON. I don't recall when it was.

Mr. CHERTOFF. Was it in the 1980's?

Mr. BRATTON. Probably sometime in the 1980's.

Mr. CHERTOFF. Was it before or after Mr. McDougal was kicked out of the savings and loan?

Mr. BRATTON. I'm not sure.

Mr. CHERTOFF. Did you have an impression in 1984 and 1985 and 1986 about Mr. McDougal's reputation for integrity?

Mr. BRATTON. I'm not sure what his reputation for integrity was. There were probably some people who were more suspect of it than others.

Mr. CHERTOFF. Well, what about you? Were you suspect of it?

Mr. BRATTON. By the mid-1980's, I thought there was probably some question as to how appropriately Mr. McDougal managed the S&L.

Mr. CHERTOFF. Did you go into the Governor at some point and say, in effect, "Stay away from this guy."?

Mr. BRATTON. The Governor had known Mr. McDougal for a long time. I thought the Governor's decision as to what his personal relationship or lack of a personal relationship with Mr. McDougal was his business and wasn't mine to dictate to him. I brought to his attention information that I thought was appropriate for him to know and then how he chose to have or not have a relationship with Mr. McDougal was something he had to decide.

Mr. CHERTOFF. Do you remember an issue Mr. McDougal had involving a health official known as a sanitarian?

Mr. BRATTON. I am generally aware of that issue.

Mr. CHERTOFF. He wanted to have somebody removed because the person was giving him difficulty on a development project; is that right?

Mr. BRATTON. I don't recall what specifically, whether he wanted to have someone removed. He thought the health department was over-aggressive in some of its interpretation of rules and regulations that applied to a subdivision that he was involved with, and he wanted the matter resolved in a way that was favorable to his development.

Mr. CHERTOFF. Did he get a meeting with the Governor over it?

Mr. BRATTON. It is my recollection that there was a meeting involving Mr. McDougal and the Health Department with the Governor.

Mr. CHERTOFF. What did the Governor say?

Mr. BRATTON. I don't think I was present.

Mr. CHERTOFF. Did you hear about it afterwards?

Mr. BRATTON. I probably heard about it before or afterwards, one or both.

Mr. CHERTOFF. What did you hear? Tell us what you heard.

Mr. BRATTON. Well, it is my general recollection that McDougal was not able to get the result that he wanted.

Mr. CHERTOFF. Well, didn't the man get removed?

Mr. BRATTON. I have no recollection about an individual personality within the general impression that I have, or the general recollection that I have was about the issue of enforcement of the regulations, and it's my general impression that McDougal didn't get the result he wanted.

Mr. CHERTOFF. I'm going to show you, we're going to refresh your memory with a memo of March 5, 1986, which we will get down to you. Who is Mr. Choate, by the way, or Ms. Choate?

Mr. BRATTON. She was a Member of the Governor's staff who had liaison responsibilities with the Department of Health and Department of Human Services.

Mr. CHERTOFF. I want you to help us understand this memo, March 5, 1986, to the Governor. There's a little check mark. Is that a sign that the Governor used to make indicating he read a memo?

Mr. BRATTON. Yes.

Mr. CHERTOFF. I think it says, "Thanks" on the top. Is that the Governor's handwriting?

Mr. BRATTON. It appears to be.

Mr. CHERTOFF. It goes:

I have talked with Tom Butler this a.m. He tells me that the 3 men Jim McDougal referenced in yesterday's meeting have been removed from those jobs. Tom met with their supervisors, too, and spelled out to all of them that none were to talk about Brittany Point, Eden Park, or Maple Creek in or outside the office, period, because they don't want to give credence to any of McDougal's allegations. Tom will send over a complete report soon.

Tom, Jerry, and Dr. Saltzman said they kept silent yesterday *out of respect for you*, but their silence was *not* tacit approval of Jim's accusations. Frankly, they were taken aback at much of what he said and felt a great deal of frustration at not responding. It was obvious to them that Jim was quite upset and had placed them in a defensive position.

I believe they took their cue from you when you told them that Jim was your friend of 20 years who had never asked for a favor plus the fact that Jim's first comment was he was being ganged on and that there had been nothing but duplicity and trickery from the Health Department.

By the way, is it your understanding that March 1986, was the first time Jim McDougal ever asked for a favor from the Governor?

Mr. BRATTON. I have no idea when and if McDougal may have asked for favors.

Mr. CHERTOFF. Well, was the Latham appointment, wasn't that in 1985?

Mr. BRATTON. I don't recall when the Latham appointment was.

Mr. CHERTOFF. The record shows that it is. Isn't it a fact that Mr. McDougal asked to have Latham appointed or suggest him to be appointed?

Mr. BRATTON. It is my understanding that he had recommended Latham for appointment to that position.

Mr. CHERTOFF. Now does this ring a bell about this meeting?

Mr. BRATTON. Not particularly.

Mr. CHERTOFF. So you can't shed any further light on the Governor's statements at the meeting?

Mr. BRATTON. No, sir. As I said, I don't believe that I was present and I don't have any specific recollection of being told any details about it.

Mr. CHERTOFF. Now, Ms. Hernreich, do you remember during the period of time you were, I guess, acting as a gatekeeper for the Governor, contacts between the Governor and Jim McDougal and Susan McDougal?

Ms. HERNREICH. I don't recall any contacts between the Governor and Jim McDougal. Susan McDougal, I recall, called me once in that period of time but I don't recall contacts with Jim McDougal and the President.

Mr. CHERTOFF. What did she call about?

Ms. HERNREICH. I don't remember.

Mr. CHERTOFF. Well, did you ever place calls to Jim McDougal for the Governor?

Ms. HERNREICH. No.

Mr. CHERTOFF. No?

Ms. HERNREICH. Did I place calls?

Mr. CHERTOFF. Yes.

Ms. HERNREICH. No, I didn't. That wasn't my job. I didn't place calls for him.

Mr. CHERTOFF. Did you ever leave word for Jim McDougal that the Governor wanted to see him?

Ms. HERNREICH. I am unaware of it if I did.

Mr. CHERTOFF. Well, I would like to put up, and we'll get down to you a message pad—actually two pages from a message pad—I think if we can suspend for a moment or maybe if we pass over, I'll have copies made and we will resume with this.

The CHAIRMAN. Would you like to—Senator Sarbanes. Why don't we put—

Senator SARBANES. Mr. Bratton, I just want to develop a couple of points with you because I was listening to this questioning from Mr. Chertoff. Who was Tom Butler?

Mr. BRATTON. Tom Butler was the Deputy Director of the Health Department, I believe he was Deputy Director at that point. If not, he was Senior Assistant Director but I believe he was a Deputy Director.

Senator SARBANES. Well, in his deposition about this meeting, the one that was referred to that McDougal was in, he said that afterwards he stayed and talked to the Governor and the Governor

told him, he said, "You go do what you have to do and you will never hear another word from me." That was my last conversation with the Governor on the matter." Were you in that meeting?

Mr. BRATTON. I don't believe I was in that meeting. I am fairly certain I was not.

Senator SARBANES. Did you know about this statement of Tom Butler's?

Mr. BRATTON. I don't know that I knew about that specific statement, but it was my general impression that Mr. McDougal did not get the result from the Health Department that he wanted, so that statement is consistent with my general understanding of the outcome.

Senator SARBANES. Then the other thing was apparently what Lex Dobbins said in his deposition—who is Lex Dobbins?

Mr. BRATTON. I don't know.

Senator SARBANES. He was one of the people in the department. Because subsequently some of these people were transferred and the issue was raised, "Well, that was done at Mr. McDougal's insistence," and he says, "McDougal could affect the same transfer without going to the Governor's office. It was standard operating procedure any time a developer complained to the State Health Department about unfair treatment, the sanitarian would be reassigned. Standard operating procedure." Then he went on to say, "Any time they had a situation like that, they would always try to correct what they call the level playing field to show no bias in the way we regulated the developers. Standard procedure."

So if a developer complained, all they had to do was go to the Health Department and the Health Department would then transfer the person. And apparently that was the standard practice.

But I gather from the Butler comment that they then handled a matter within the department in their normal way of doing business. Is that your understanding, or do you have an understanding about that?

Mr. BRATTON. As I said, Senator, my understanding was in a very general way, that McDougal had asked for some relief from Health Department enforcement of regulations and that ultimately he did not get the relief that he had requested.

Senator SARBANES. Well, apparently he really made a scene in that meeting, but the Governor at the end of the meeting told Mr. Butler, "You go do what you have to do and you'll never hear another word from me." So I just want that on the record.

Mr. IVEY. If I could add to that additionally, let me read some of William A. Teer's deposition. He worked under Mr. Butler apparently, and after discussing the Health Department meeting—this is on pages 37 and 38 of his deposition before this Committee—he was asked:

Question: Well, did he tell you how the decision was made to reassign Dobbins and these other sanitarians?

Answer: No, I don't remember if they all came up as far as because of Lex or if anything else came up on the other projects.

Question: Well, who made—

Answer: What we have done in the past is when we have a situation going similar to what we had with McDougal, in order to show that we are trying to bend over to be customer conscious and pro-customer, is that we have reassigned people. I mean, we've reassigned people all the way back to 197—late 1970's. As a matter

of fact, some of the most recent things we've had was, let me see, we reassigned a man on an establishment as of this year, I believe.

Senator SARBANES. Go ahead.

Mr. CHERTOFF. So Mr. Bratton, if this was such a plain vanilla thing, why did the Governor entertain Mr. McDougal and say, as we have in the contemporaneous memo, "that Jim was his friend of 20 years who had never asked for a favor." Do you know why?

Mr. BRATTON. No, sir, I don't know specifically why the Governor decided to meet with Mr. McDougal and representatives of the Health Department on that issue.

Mr. CHERTOFF. Ms. Hernreich, I think we've put before you and we're going to put up a couple of pages from a message pad which were taken by Mr. McDougal's secretary, Ms. Strayhorn, and I think if you look, they both appear to be January 15, one in fact appears to have been kind of crossed out and then it's followed by the second one. It's from Nancy Hernreich, misspelled, Governor's office, 371-2345. Is that number a familiar number to you?

Ms. HERNREICH. Yes, that's the number at the Governor's office.

Mr. CHERTOFF. That was his personal number?

Ms. HERNREICH. No, the general number at the Governor's office.

Mr. CHERTOFF. It says, "Can see Governor Saturday at 11:00—Go by Mansion." Why would you have placed a call to McDougal about when Mr. McDougal could see the Governor?

Ms. HERNREICH. I do not recall doing this, and certainly if it's there, then, you know, I don't question that I did it, but I received and set up probably over the period of time that I worked for the Governor tens of thousands—I have taken tens of thousands of requests and set up thousands of meetings and events for him, and I just didn't recall that this within had occurred.

Mr. CHERTOFF. So you were a scheduler among other things?

Ms. HERNREICH. Yes, I was.

Mr. CHERTOFF. You didn't normally place calls for the Governor?

Ms. HERNREICH. No, I did not place calls for him, but this was—looking at the message, it looks like I was scheduling a meeting with Mr. McDougal and the Governor. And with that message.

Mr. CHERTOFF. Was your communication with Mr. McDougal involving something to do with closing on a house?

Ms. HERNREICH. I have no idea. I really don't remember at all what it was about.

Mr. CHERTOFF. Let me show you a daily schedule for the Governor, same date, Monday, January 15.

Ms. HERNREICH. OK. Do we know what year this is?

Mr. CHERTOFF. We don't, and maybe you can help us by looking at the document. It's DKSJ 13118. It may be 1986 but let's see if you can help us on this a little bit. Do you have that document in front of you?

Ms. HERNREICH. Yes, I do.

Mr. CHERTOFF. Is this your schedule that you would have prepared?

Ms. HERNREICH. I don't know. We changed our format shortly after I arrived there, and most of the schedules that I did during the time that I was his scheduler were not in this format, so I don't know if it was mine or not.

Mr. CHERTOFF. Is it your handwriting on this?

Ms. HERNREICH. No.

Mr. CHERTOFF. Whose handwriting is it?

Ms. HERNREICH. I don't know whose handwriting it is.

Mr. CHERTOFF. Do you know who Dr. Qualls was?

Ms. HERNREICH. Where is that?

Mr. CHERTOFF. At the bottom, "Dr. Qualls will be sworn in."

Ms. HERNREICH. I don't know. It might be R. L. Qualls.

Mr. CHERTOFF. Who is that?

Ms. HERNREICH. Well, I know him now because he lives in my former hometown in Fort Smith, Arkansas, and I know him from that as much as anything.

Mr. CHERTOFF. Did he hold an official position in the State in the 1980's?

Ms. HERNREICH. I don't know.

Mr. CHERTOFF. Because I thought maybe it could help identify the date.

Ms. HERNREICH. I don't think this is my document because I don't recall ever scheduling something where he would have been sworn in. I don't know what he did there, so I don't recall him ever being in the government when I was there.

Mr. CHERTOFF. Now this reference to Susan McDougal, it says "Mansion." Typically, was it the practice if there was going to be a meeting at the Mansion to put "Mansion" in parentheses?

Ms. HERNREICH. Again, this doesn't look familiar at all to me, and you would have had to have put it there somewhere. If it was Monday the 15th—yeah. My schedules, what I would have done would have been probably indicated depart Mansion for Governor's office, State Capitol at a certain point, so that it would have maybe been understood that the meeting was at the Mansion and then at some point you indicate what time he left the mansion to go to the Governor's office in the State Capitol.

Mr. CHERTOFF. Who else prepared this schedule besides you in 1986, let's say, in January 1986?

Ms. HERNREICH. My assistants at the time would have probably done the typing on it.

Mr. CHERTOFF. You actually started as the scheduler when, in 1985?

Ms. HERNREICH. Yes, in September 1985, late September 1985.

Mr. CHERTOFF. Now let me ask you to look at the second sheet of paper. We only have a few of these we have received so I can't claim this is comprehensive. This is dated Monday, August 13th. Midway down the page it says, "McDougal et al. Re: Road trip." Is that your handwriting?

Ms. HERNREICH. No, it's not.

Mr. CHERTOFF. Do you know what that refers to?

Ms. HERNREICH. No, I don't.

Mr. CHERTOFF. Did you ever schedule matters with Dan Lasater?

Ms. HERNREICH. No, not that I recall.

Mr. CHERTOFF. Did you schedule any airplane trips for the Governor with Mr. Lasater?

Ms. HERNREICH. Not that I recall.

Mr. CHERTOFF. Any other trips with Mr. Lasater?

Ms. HERNREICH. No, not that I recall.

Mr. CHERTOFF. Meetings with Mr. Lasater?

Ms. HERNREICH. Not that I recall.

Mr. CHERTOFF. So you don't remember any contact or discussion with Mr. Lasater during the 1980's?

Ms. HERNREICH. No. Well, when I arrived, after September 1985, no, I do not recall any discussions with Mr. Lasater.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I have no questions.

The CHAIRMAN. Thank you, Ms. Hernreich and Mr. Bratton, for being here today. We stand in adjournment until tomorrow morning at 10:00 a.m.

[Whereupon, at 1:38 p.m., the hearing was adjourned, to reconvene at 10:00 a.m., on Wednesday, February 14, 1996.]

[Appendix supplied for the record follows:]

7/2/86



Sam -

Madison Guaranty is in pretty serious trouble. Because of Bill's relationship w/ McDougal, we probably ought to talk about it. The meeting referred to in the attached letter has been moved up to July 11, 1986 and the FH LBB has asked me to be ~~at~~ at the meeting.

Please note that while all of the FH LBB restrictions in the letter are serious, #5 & 6 effectively put Madison out of business.

Thank you for your support

BEVERLY GASSETT
Securities Commissioner

BG

CCBW-884.

Rec'd 2-27-87

MEMORANDUM

TO: Mike Wilson
FROM: JGT
DATE: 2/24/87
RE: PROPOSED LEGISLATION FOR CASTLE SEWER & WATER CORP.
FILE NO. 7261-1

Attached is a proposed bill designed to take care of a problem of both Madison Guaranty Savings & Loan and Castle Sewer and Water Corporation ("CS&W").

The bill attempts to deal only with the CS&W sewer and water system by being limited to "private" companies within ten miles of a city with a population in excess of 140,000 (which, I assume, includes Little Rock, but only Little Rock. We may need to check that population number).

It would essentially create a rate deregulation to the extent CS&W's rates did not exceed 10% above what Little Rock charges its own water customers. It would require health and EPA reports by CS&W.

CS&W is at the old Little Rock South Industrial Park and serves about 90 customers. Over one-half of its revenue is from a few industrial clients.

William "Bill" Walker will need to know about this. I have not had a chance to discuss it with him.

The cost and uncertainties in regulatory compliance for a little \$8,000 per month company like this is simply too great. This would vastly simplify while still protecting customers if the utility tries to charge more than 110% of what Little Rock is charging its residents. (Actually, I think Little Rock charges more to non-residents and, maybe, more than 110%).

There is some precedent for the 110% limit in the statute that allows city electric companies to charge adjacent non-residents up to 110% of the rate they charge their residents without APSC control).

Would you: (a) review; (b) ask legislative counsel to put in bill form and check the population; and (c) let me know if you think it can be passed this session.

Mike Wilson Memorandum
2-24-87
Page 2

I have not asked the APSC to review it. (I have sent a copy to Ernie Faucette of the Arkansas Rural Water Association. He has voiced no objection to me). I'll be in trial in Crittenden County Wednesday and part of Thursday but will check for messages.

JGT/ljk
Attachment

bcc: Mr. Bob Shults (w/attachment) ✓
Mr. R. D. Randolph (w/attachment)

TO: 39 DATE: 4/14
 FROM: NH
 RE: RD Randolph's Visit

- | | |
|---|---|
| <input type="checkbox"/> Immediate action | <input type="checkbox"/> No action required |
| <input type="checkbox"/> Draft reply for Governor | <input type="checkbox"/> Please see me |
| <input type="checkbox"/> Reply or act in 1 week | <input type="checkbox"/> File |
| <input type="checkbox"/> Prepare report | <input type="checkbox"/> For your information |
| <input type="checkbox"/> For comment | |

REMARKS:

Mr. Randolph dropped by to see you this morning to talk to you about the Water Bill you vetoed. He said that he talked to you on Sunday morning. He wants to know if the veto is going to stand. He would like you to call Jim Guy Tucker about this. He said that he has a difficult time getting an answer from you. (He mentioned a meeting between you, Tucker and Jim McDougal a couple of years ago which involved \$33,000. This was pretty cryptic.) He seemed angry. Someone, I think he prefers you, needs to call Tucker.

cc SB 4/15

see I have him
 case him

DKSN018003

Cash Sent
Again

to your Father
has been paid

DKSN018009

MITCHELL, WILLIAMS, SELIG & TUCKER

[illegible]

JACKSONVILLE OFFICE
1208 WEST MAIN STREET
POST OFFICE BOX 8288
JACKSONVILLE ARKANSAS 72076
TELEPHONE 501-982-9411
TELECOPIER 501-376-8712

[illegible]

country.
-is also
-michael -olson
-peace = three
or result.
-have a surprise

[illegible]

The Honorable Bill Clinton
Governor
State Capitol
Little Rock, AR 72201

Dear Governor Clinton:

H.B. 1780 by Representatives Mike Wilson and William Walker was vetoed after having passed both houses with no dissenting vote.

The bill was designed to resolve the problems faced by small water and sewer companies that comply easily and fully with EPA and State Health Department requirements but are not financially able to comply with statutes requiring rate regulation by the State Public Service Commission.

The bill could serve as an excellent model in that it offers such a sewer and water company the opportunity for substantial rate deregulation if the company is willing to limit its rates to no more than 110% of the rate being charged by a city of the first class to its own customers.

R. D. Randolph, Madison Guaranty Savings & Loan, and I were all very disappointed that this non-controversial bill was vetoed. If a special session does become necessary, we ask that your call include this legislation. If the member of your staff who suggested a veto has any questions or desires

MITCHELL, WILLIAMS, SELIG & TUCKER

The Honorable Bill Clinton
April 24, 1987
Page Two

revisions in its form we certainly hope Rep. Walker,
Rep. Wilson, R. D. or I will be given an opportunity to
respond.

Very truly yours,

MITCHELL, WILLIAMS, SELIG & TUCKER

By

Jim Guy Tucker
Jim Guy Tucker

JGT:rsa

cc: William Walker
Mike Wilson
R. D. Randolph
Bob Shults
Jeff Stern

CASTLE SEWER AND WATER CORPORATION
1801 East 145th Street
Little Rock, AR 72206

April 27, 1987

Mr. Jeffrey B. Stern
Ingersoll and Block
1401 Sixteenth Street, N. W.
Washington, D. C. 20036

Re: Castle Sewer and Water Corporation

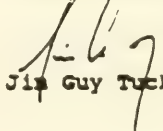
Dear Jeff:

Governor Clinton vetoed H.B. 1780. He has told R. D. Randolph and the sponsors that the veto was an error he will correct if there is a special legislative session. Such a special session is generally expected, but not guaranteed. If held, it could come as early as June or as late as September.

This legislation is needed critically for the utility. I suggest we complete our contract; execute it; and wait to see if a session develops. Effectiveness of the contract will still depend on enactment of the legislation.

Very truly yours,

CASTLE SEWER AND WATER CORP.


Jim Guy Tucker

JGT/ljk

cc: Mr. Bob Shults
Mr. R. D. Randolph

OFFICE OF THE GOVERNOR



MEMORANDUM

To: Governor

Date: May 19, 1987

From: Sam *Smith*Subject: Sewer District regulation legislation/Jim Gwy Tucker-
R. D. Randolph, Mike Wilson, Bill Walker

I have talked to Tucker about the situation. According to Tucker, Madison Guaranty Savings and Loan purchased the water and sewer company when it purchased the old Little Rock Industrial Park area; however, the S&L subsequently learned that it could not legally own and operate a utility company. Therefore, the company was sold to a company organized by R. D. Randolph for the purpose of acquiring this water and sewer utility. The problem arises from the fact that a utility legally subject to regulation by the Public Service Commission is prohibited from mortgaging utility property without permission of the Public Service Commission. Madison Guaranty is the mortgage holder. Therefore, in Tucker's opinion, the mortgage is invalid as the utility had not filed for regulation and obtained approval of the mortgage.

Bill Walker's interest in this matter apparently arises from the fact that this utility company could sell water to the City of Wrightsville at wholesale at a price substantially less than Wrightsville is currently purchasing water from the City of Little Rock. There is also a possibility, although a lesser one according to Tucker, that the company could extend utility service into the Wrightsville area.

According to Tucker, if the legislation exempting certain water and sewer companies from PSC regulation is not enacted in the special session, litigation will probably be initiated between Madison Guaranty and the company owning the utility and that the initiation of litigation between those two parties would likely negate the possibility of the utility expanding its operation through any sort of arrangements with the City of Wrightsville. I assume the litigation would result because of the question of the validity of the mortgage and the fact that the S&L is now being operated under the close scrutiny of FSLIC and is no longer controlled by McDougal, et. al.

DKSN018011

I have talked with Robert Johnston and asked Johnston to review with appropriate PSC staff what options may be available to address the Tucker/Randolph problem short of the deregulation proposed by HB 1780. I did tell Robert that I thought you would be inclined to try to be of some help in resolving this problem. Robert is to get back to me tomorrow or the next day. I left it with Tucker that either PSC or I would get back to him after PSC had a chance to evaluate the situation.

SIB/js

cc: Nancy Bernreith

DKSN018012

MEMORANDUM

TO: Jernell Gray

FROM: Doug Strack

SUBJECT: H.B. 1780 - RBC Position

DATE: April 8, 1967

This is in response to your request for my opinion of the merits of H.B. 1780.

H.B. 1780 provides that those private water and sewer utilities ("utilities") which provide services to customers within ten miles of the corporate limits of a city of the First Class which has a population in excess of 140,000 persons, . . . ("City"). Utilities which are operated by improvement districts or municipalities are exempt from this bill. The bill exempts from RBC regulation those utilities which, among other things, charge rate which is not more than 10% greater than the rate charged by the city for the municipally provided water and sewer utilities.

The bill is obviously designed to apply only to some utilities within ten miles of Little Rock. It is really a kind of special legislation, passed with an eye to meeting constitutional provisions against special legislation. It may possibly be vulnerable to a constitutional challenge as special legislation, however.

I believe the concept of the bill is fine, however, and should probably be extended to cover all water and sewer utilities that are Class 1 or lower under the Uniform System of Accounts adopted by the RBC. The reason is that rate base regulation by the RBC often exacts a toll on management and ratepayers that exceeds its value.

For example, if a utility needs to make major improvements which require significant expenditures, the utility must first get the money to do so. The usual sources are borrowing, either from banks or by issuing bonds, or by issuing equity. Then the utility can come in for rate relief, to cover the cost of the improvements. Such a procedure, however, works well only for large utilities that are solvent enough to (a) borrow from banks.

Small Water Co.

MEMORANDUM

TO: Super Collins
Larry Jegley
Tony Creston

FROM: Doug Strook

DATE: January 27, 1988

SUBJ: Small water company financial problems and quality of service related problems--possible solution by using Act 310 of 1981, as amended; simplified filing requirements; legislation providing low cost loans; etc.

Lately, we have been talking about the problems small water companies have with regards to compliance with Quality of Service health and safety regulations. The small water companies find it hard to come up with the money, oftentimes, to finance the health and safety related improvements required by Q of S and health department laws and regulations. They also find it difficult to finance a rate case, with all of its costs and expenses in hiring accountants and lawyers. As a result we rapidly reach a stalemate in achieving compliance with health and safety measures, because the utility does not have the money and cannot afford to file a rate case to get the money.

Having given this matter a little bit of thought, I see ~~and~~ possible solutions:

- (a) Simplified filing requirements for general rate cases. If we could vastly reduce the amount of paper work imposed on small water companies, they might be more willing and able to seek the necessary relief.
- (b) Eliminate, by law, our jurisdiction over small water companies. This, however, would leave them unregulated, at least for rate purposes, but would allow the company to increase rates whenever it needed money. The Department of Health would continue to have jurisdiction over the health and safety aspects of the company.
- (c) Establish ranges of rates that the PSC would presume, on the front end, to be acceptable, much like TIER ratemaking, allowed to the Woodruff Coop. Higher rates would either have to be justified in a rate case, or sought by waiver. The rate ranges established by the PSC could be adjusted from time to time.

Memo - Small Water Companies
January 17, 1955

- (d) Allow/encourage water companies to file tariffs under Act 310 of 1951, if they have health and safety requirements to meet, which require expenditures of funds. This would provide them with the needed rate relief immediately, with a minimum of cost and trouble to the water utility. They would retain the ACT 310 rates until their next rate case, and can file a new one every six months, as needed, to meet the Act and safety requirements imposed by the PSC and the Department of Health.
- (e) Consider the possibility of a range of automatic adjustment clauses, which might improve the cash flow of the small water company, such as a purchased power adjustment clause, and which would eliminate the need for frequent general rate cases.

Out of all the above approaches, I think that the use of Act 310 might be the most promising, for those companies which cannot pay for required improvements for health and safety, and which cannot afford to file a general rate case. Act 310 relief would enable them to get on their feet and fund these mandated improvements. Act 310 would provide the simplest, quickest relief. We might also consider innovated adjustment clauses.

Eventually, I think that a combination of simplified filing requirements and establishment of ranges of acceptable rates would also be very helpful, if we are to continue regulating these marginal, small water companies. We are already working towards simplified filing requirements, as a part of our effort to upgrade the general minimum filing requirements.

DPS:ds

cc: Jerrall Clark, Director

Knox 6 copies

GOVERNOR'S OFFICE

Jane

RE: Nov / Dec appnts.

DSTCC are probably inpt. -
 talk with Brady - have him
 visit with Ed Yung - same
 on Bd of Health.

② Steam Preservation (?) I
 assume recent appnts. have
 care of.

③ Soil Classifier -
 Major Rutledge of Fayville is
 friend - he was one calling for
 Ben McGuire - probably should
 accept. if he wants it. (over)

DKSN013314

- (4) ABC - Watters is acc. to
60V - but, confirm.
- (5) Boney Bd - ask McDoyl.
- (6) Dr. Wing on Health Bd
is my friend (but not
supportive (at this time) of
Yong so no need to
reappt. If choice is from
Fey's list, I'd go for Dr.
Jay McDonald.
- (7) Anticipate support from
Nurture for F. Rogers to
Plan Bd.

DKSN013315

OFFICE OF THE GOVERNOR



MEMORANDUM

To: Governor Date: 3-5-86
From: Chase
Subject: Follow-up to McDoogal/Health Dept. meeting with you.

I have talked with Tom Butler this a.m. He tells me that the 3 men Jim McDougal referenced in yesterday's meeting have been removed from those jobs. Tom met with their supervisors, too, and spelled out to all of them that none were to talk about Brassard Point, Eden Park or Maple Creek in or outside the office, period, because they don't want to give credence to any of McDougal's allegations. Tom will send over a complete report soon.

Tom, Jerry and Dr. Salzman said they kept silent yesterday out of respect for you, but their silence was not tacit approval of Jim's accusations. Frankly, they were taken aback at much of what he said and felt a great deal of frustration at not responding. It was obvious to them that Jim was quite upset and had placed them in a defensive position.

I believe they took their cue from you when you told them that Jim was your friend of 20 years who had never asked for a favor plus the fact that Jim's first comment was he was being ganged on and that there had been nothing but duplicity and trickery from the Health Dept.

DKSN013404

When the sanatoriums were called in this morning, they did ask Tom if

you had been in agreement with Jim's assessment and Tom defended you by saying that you were there to listen as a courtesy to your friend and not really to pass judgment.

I am relating this to you because these past few weeks at the Health Dept. have been difficult for Tom - dealing with budget cuts, calling employees in to lay them off, trying to soothe ruffled feathers and hurt feelings because of this, the measles outbreak, which has thus far cost \$800,000 (not knowing how they will pay), and talking to all of the irate people calling when basketball tournaments got canceled as a result of the measles problem. Don't laugh! They were furious. The ongoing trauma of dealing with disgruntled Jacksonville residents. Then, yesterday the meeting over here was some too spinning. I think you can appreciate Tom's dismay at having to sit and listen to someone refer to him as his employees he feels he knows fairly well as "not sane, not qualified, not stable and psychotic". I would like to think your instinct would be to give me or someone else up here the benefit of the doubt were you put in that situation. (In fact, I was pleased when you did come to your staff's defense not long ago as Randy Ingle began criticizing us. I am not implying any comparison between Jim McDougal and Ingle, but you see my point).

P.S. Just this morning, Keith related that a friend who works at the Health Department was praising Tom Butler for his honesty and sensitivity in dealing with employees and the way the lay-off situation had been handled.

DKSN013405

Tops Form No 4002

Litho in U.S.A.

Tops Form No. 4002

Litho in U.S.A.

FOR J.M.C.D. DATE 1-15 TIME 11:20 AM
PM
 M Henry Harrison
 OF Danvers, Mass.
 PHONE 371-2345
 AREA CODE 371 NUMBER 2345 EXTENSION
 MESSAGE Call me Danvers
Sat. Jan 16 11:00 - 12
Reg. Harrison
 SIGNED [Signature] TOPS FORM 4002

WHILE YOU WERE AWAY

FOR J.M.C.D. DATE 1-15 TIME 3:30 AM
PM
 M Henry Harrison
 OF Danvers, Mass.
 PHONE 371-2345
 AREA CODE 371 NUMBER 2345 EXTENSION
 MESSAGE 43 date of last check
#21165-49 balance
in telephone M/C 4.
 SIGNED [Signature] TOPS FORM 4002

WHILE YOU WERE AWAY

FOR J.M.C.D. DATE 1-16 TIME 9:30 AM
PM
 M Van Manning
 OF MAM'L - Insurance -
 PHONE 523-6771
 AREA CODE 523 NUMBER 6771 EXTENSION
 MESSAGE Is concerned about
Bob's recent leaving
(-Will be there next about
or can get in early in
 SIGNED [Signature] TOPS FORM 4002

WHILE YOU WERE AWAY

FOR J.M.C.D. DATE 1-16 TIME 11:21 AM
PM
 M Bob (Hunt)
 OF Danvers, Mass.
 PHONE 224-3922
 AREA CODE 224 NUMBER 3922 EXTENSION
 MESSAGE 1-16 to find if he
wants to change attorney to draw
up water rights
 SIGNED [Signature] TOPS FORM 4002

GOVERNOR'S DAILY SCHEDULE

DATE: Monday, Jan. 15

7:30 (mansion) Breakfast Joint Budget

:00	1:00 (capitol) State of the State Address
:15	
:30	1:15
:45	1:30
:00	1:45
:15	2:00 State of the State Address
:30	2:15
:45	2:30 L. G. Long
:00	2:45 State of the State Address
:15	3:00 (capitol) Wally DeRoock
:30	3:15 (capitol) Wayne Hamon / Rudy
:45	3:30 Morris Henry
:00	3:45 Rep. Cunningham
:15	4:00 (Conference Room) Reception for Legislators
:30	4:15
:45	4:30
:00	4:45
:15	5:00
:30	
:45	

(mansion) Susan McDougal
to close on your house

Dr. Qualls will be sworn in,
You are not expected to be here

DKSN013118



1644

3 9999 05577 679 1

GOVERNOR'S DAILY SCHEDULE

DATE: Monday, Aug. 13

0	1:00	
5	1:15	
0	1:30	Steve & Joyce Wooten
5	1:45	Op - 12/1
0	2:00	Press Conference Announce Energy Office Grant Program to Gov
5	2:15	
0	2:30	
5	2:45	
00	3:00	Mary Lou King--Food Prices
15	3:15	Smalley / Rob
30	3:30	Vashti/Rudy
45	3:45	McDonnell et al re road trip
00	4:00	Steve / Banner / Be Jones
15	4:15	Key Fowler
30	4:30	Amos David / Max Amos
45	4:45	Key Fowler
00	5:00	Row Address

DKSN013154



